THE PRACTICE AND PROCEDURE OF THE YORK ECCLESIASTICAL COURTS DURING THE REIGN OF ELIZABETH (A DESCRIPTIVE SURVEY)

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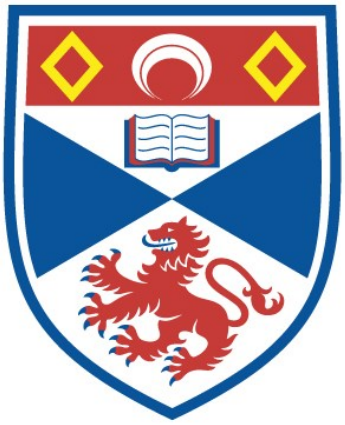
A Thesis Submitted for the Degree of PhD
at the
University of St Andrews



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CERTIFICATE.

I certify that Carson Ritchie has spent at least nine terms at research work under my direction and that he has fulfilled the conditions of Ordinance No. 16. of the University Court of the University of St. Andrews and that he is qualified to submit the accompanying thesis in application for the degree of P.H. D.

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I hereby declare that the following thesis is a record of research work carried out by me ; that the thesis is my own composition, and that it has not been previously presented for any Higher degree.

CAREER.

I matriculated in the University of St. Andrews in I946, and follo
a course leading to graduation in M.A. with honours in pure histor
until I950. In August I950 I commenced the research of which th
result is now being submitted as a P. H. D. thesis. I was appoint
to a Carnegie Research Scholarship.

THE PRACTICE AND PROCEDURE OF THE YORK ECCLESIASTICAL COURTS DURING THE REIGN OF ELIZABETH.

(A DESCRIPTIVE SURVEY.)

BY C. RITCHIE. M.A.

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INTRODUCTION.

In the following thesis the writer has made a survey of some of the principal ecclesiastical courts held at York during the reign of Elizabeth. Although the temptations to a special study of one or other of the courts were very great it was felt that any specialised piece of writing might prove obscure and even misleading , in view of the fact that no attempt had hitherto been made to deal with procedure and jurisdiction at York a a whole. Nevertheless the ecclesiastical courts at York were very different , both in procedure and constitution, from those of the southern province. It might almost be said that the materials for an account of York procedure did not exist ; there were no known treatises on procedure or precedent books contemporary with or earlier than Elizabethan times. The writer has been fortunate enough to find two precedent books, one for the late fifteenth century, the other contemporary with this period. These contain a vast collection of forms for the courts of York, and one of them contains a treatise on procedure there , apparently the only separate treatise on York procedure and probably on among the earliest treatises on procedure in the ecclesiastical courts in existence. From these two precedent books an account of procedure has been compiled, and in order to render it more intelligible to the reader chapters have been written on the practice of the courts, their officers , and their general effects. The whole will, it is hoped, throw some light on one of the dark places of Elizabethan history.

NOTE AS TO REFERENCES.

Except where it is stated otherwise references in this thesis are to the documents and court books in the York Diocesan Registry, York.

In the case of the court books reference is usually given to the box title. This is for convenience of reference to the reader, as the catalogue number does not normally appear on the box, and in one case at any rate the catalogue reference number has either been omitted , or has been so smudged as to be indecipherable. The ' Chancery ' Court Book for I595-99 has apparently been boxed under the title of ' Chancery ' I586-87. (AB 46.)

SHORT BIBLIOGRAPHY.

John Ayliffe. ' Parergon Juris Canonici Anglicani : Or a Commentary By way of Supplement To The Canons and Constitutions of the Church of England.' London. MDCCXXXIV.

Richard Burn. ' Ecclesiastical Law.' London MDCCLXIII.

' The Clerk's Instructor In The Ecclesiastical Courts : ' By a Gentleman of Doctors Commons. Dublin MDCCLXVI.

(Conset.) ' The Practice of the Spiritual or Ecclesiastical Courts ' 1700. By. H. C.

' Ecclesiastical Courts Commission Report. ' 1883.

Holdsworth. , W. S. ' A History of English Law. ' Vol. I. 1927.

James Thomas Law. ' Forms of Ecclesiastical Law.' London . 1851.

Sir Robert Phillimore. ' The Ecclesiastical Law of the Church of England.' London. 1873.

' Special and General Reports ... into the practice and jurisdiction of The Ecclesiastical Courts of England and Wales.' London 1832.

CHAPTER ONE. THE PRACTICE OF THE YORK ECCLESIASTICAL COURTS.

The causes which might bring a person into the ecclesiastical courts, either as a suitor or as defendant in a cause brought against him out of the office of the judge or at the instance of some party during this period form an extensive list, indeed it is possible to extend it almost indefinitely, as there was nothing connected with ecclesiastical matters of which the courts might not take cognisance, provided that in so doing they did not contravene statute law. Thus while it is possible to compile a list of causes tried in the ecclesiastical courts from the various authorities it is well to bear in mind the statement of Conset that ' it is generally to be noted that the Ecclesiastical Judges may lawfully proceed upon any Cause, of which the Canon or Ecclesiastical Law takes any cognisance to Try and Determine, so as the Principal or Statute Laws of this Kingdom contradict it not, or so as no Action or Plea, may be Instituted or Commenced for the same matter at the Common Law.' (I)

A good introduction to the scope of the ecclesiastical practice, as it was understood in Elizabethan times, can be found in the contemporary manuscript in the Cottonian Collection called ' An abstract of all causes belonginge to the Ecclesiasticall Court.' (2) To judge by the handwriting it was probably written towards the end of the sixteenth century. The statutory authorities for the courts' action in these causes are given by the author, but they have been omitted here as they would occupy too much space. They can be found in Holdsworth(3) and Burn. (4)

(I) Conset. ' The Practice of the Spirituall or Ecclesiastical Courts.' Part I Chap. IV. Sect. I. (2) B. M. M.S.S. Room. Cott. Cleo. F. II/II7. (3) Holdsworth. ' A History of English Law.' Vol. I. P. 6I4. 4th Edition. (4) Burn's ' Ecclesiastical Law.'

Here is the abstract.

' An abstract of all causes belonginge to the Ecclesiasticall Court.

Testamentarye causes.'

(The writer is giving here not the names of the causes but the objects ove- which contention might arise. Typical testamentary matters at York were : Commission of administration.(I) Office for the receipt of an account. (2) Office for the exhibition of an inventory. (3))

' Last wills. (4)

2. Codicills. (5)

3. Legacies. (6)

4. Administracons. (7)

5. Accounts upon them. (8)

6. Sequestracons of the dead's goods.

7. Lres. (Letters) ad colligendum. '

(i.e. Letters to collect. These were a commission issued by the ordinary to some person conferring power to collect the goods of the deceased, either where he had died intestate or where the executor had refused to administer.)

' Marriage and solempnizacon thereof.

Causes matrimoniall.

I. Divorces. '

(Though not unknown at York these were not common at this time. Perhaps they were more frequent in pre-reformation times. The Cambridge Precedent Book, which dates from c. I485- I500 gives numerous forms connected with divorce causes, among them ' A Commission to repeat witnesses in a divorce

(I)Excheq. Crt. Bk. I570-72 F. 27.(2) Idem. F. 6. (3) Idem F. I6.(4 Idem F. 8
(5) Idem F. 77. (6) An example of subtraction (i.e. non payment) of legacy is RAS.59/27. (7) An example of office against an administrator is RAS 59/256
(8) An example of office against an administrator to make him render an account is RAS 59/317.

cause.' (I) an ' Inhibition that it should not be proceeded in further in a divorce cause because of expense.' (2))

' 2. Iactitacon of Matrimonie. (3)'

(Iactitation of marriage, or boasting of marriage, consisted in a man's boasting that he was contracted in marriage to a woman when in fact no such contract had been formed. It was held that this diminished the woman's chance of making a suitable marriage and she could therefore proceed against the man who had made the boast. (4))

' 3. Questions of Legitimacon. (5)'

(Known as ' matrimonial ' causes at York. They were tried summarily. An example of a matrimonial cause is given in the account of summary procedure in a later chapter. An ' Inquisition upon the validity or nullity of marriage ' might also be tried in the spiritual courts. (6) A legal manuscript of the early Stuart period preserved in the Dean and Chapter Library at York, (7) says ' the trial ther of must be by the bishopp uppon inquisition taken before him as Judge thereof, which is after this manner ; the king sendes his writ to the bishop to make enquirie, when the bishop hath received the letters of the king he doth give notice thereof unto the party who took excepcions unto the matrimony at his dwelling... to speak at the day affixed by him against ye marriage if he will, and also such notice given whether the partie come or not the witnesses of the demaundaunt to prove the lawfulness of the marriage are taken and admitted by the bishopp; if no sufficient exception be taken to ye witnesses. After the depositions taken the answer (is) published and certified unto the king or his justice into the Court where

(I) Cambridge. Univ. Lib. Addit. M.S. 3II5, F I39. (2) Idem. F. I52. (3) I have seen no examples and probably it was an unusual cause. (4) Conset Part VI. (5) RAS 59/343. (6) ' Audience' Crt. Bk. I579-84 F. I. (7) Bound with IO.L. I8. D. & C. Lib.)

the issue is joyned by letters under the seale of the bishopp.')

' 4. Bastardie.'

(This was called filiation at York. A matrimonial and filial cause is given as an example of summary procedure in a later chapter, and at the end of it the Judge pronounces for the validity of the marriage and the legitimacy of the child born of it. ' Bastardie,' says the law M.S. quoted above, ' is an ecclesiastical cause, and if generall bastardie be pleaded to the writ of the partie the same shalbe tried by the certificate of the bishop whether it be in a reall or personall action. But if it be pleaded that the partie was borne at such a place before the marriage solemnized... this is a special bastardy and the same shalbe tried by Jury of the common law.' See further Chapter 27 of the M.S. ' Of the power of the Ordinary and of the certificate of loyaltie of matrimonie, of bastardie...etc.' Matrimonial and filial causes are quite common at York.)

' 5. Restitucion of a man's wife taken awaie.'

(' Taken away ' here probably means ' seduced ' rather than ' abducted.' It was one of the many thankless tasks of the ordinary to persuade wives to return to their lawful husbands. The Bodleian Precedent Book gives the forms ' Citation to compel a wife to cohabit with her husband, from the Bishop of Durham,' (I) and ' Citation to cohabit with a wife ,' where the husband is the guilty party. (2))

' 6. Compulsion that a man receive his wife againe.'

(Or restitution of conjugal rights. (3) The attitude of many husbands towards their wives is summed up in the following outburst. Although the

(I) Bodleian Lib. Bucks. Archd. M.S. d. 4. F. 65. (This document reads rather obscurely, as the scribe, John Martiall, seems to have mixed up the nam of the persons concerned. (2) Idem. F. 5I.
(3) RAS 59/25.

cause concerned did not come on at York it is useful as an illustration of the sort of material with which the courts had to deal.,

' Being entreted by certeyne of the said Benett's kinsfolk to use the said his wife well, as an honest man shold use his wife, said unto them as follow-ithe or lyke in effect. ' By Gode's bloude, if I be constrayned to take her into my company as my wif I will get a chayne and a stapull and stricke the stapull with the chayne into a wall and fast lock her unto yt. And if she can get breade she shall eate breade, if she can get water she shall have water, and by God's bloude if she can get none she shall have none. And I will use her as I wold use a dogge.' (I) The Cambridge Precedent Book gives the form of a ' Monition to keep company with one's wife,' (2) in connection with causes of this sort.)

'7. Suits for goods or chattels promised with a woman in marriadge.' (This is called by Conset a cause ' of subtraction of dowry in consideration of marriage.' (3) He proceeds to draw a distinction, here a not very clear one, and says that this cause depends on the father's promise of his daughter in marriage, and also of his promise of a certain sum of money with her. If the latter promise is broken the husband has an action in the Ecclesiastical Courts. If on the other hand the father promises the prospective son in law a sum of money on the marriage day, or some days after, an action lies in the common law. The distinction seems to exist in the fact that the first promise has to do with a marriage contract, while the second has not. I have not seen any causes of this sort at York.)

(I) The Court of Arches records in the Bodleian, now in process of cataloguing. (2) Cam. Lib. Addit. M. S. 3II5. F. I26. (3) Conset Part. I. Chap. IV. Sect. I.

' Causes belonging to benefices.

I. Lettres of orders ad dimissaries. '

(These were letters admitting men to holy orders. At York this admission was the concern of the Vicar General. In his commission, which is quoted in a later chapter, the clause in which he is empowered to grant these letters runs as follows. ' Also to deliver and concede letters dismissorial to our subjects who wish to be promoted to sacred orders.' (I) The writer of the ' Abstract ' is here presumably referring to causes which might arise out of the grant of letters dismissorial, or their refusal, as it was not necessary to bring a cause in order to obtain them, at York at any rate, as might be done in the case of institution to a living.)

'2. Institutions, Inductions, Presentacions, Collacions.'

(Institution occurs when the bishop says to a clerk ' Instituo te Rectorem talis ecclesie.' (2) This charge gives the cleric power of his cure of souls, or the spirituality of his benefice, induction , on the other hand, refers to the temporality of the benefice. (3) Collation, ' Signifies properly the Bestowing of a Benefice by the Bishop that hath it in his own Gift or Patronage, and differeth from Institution in this that Institution into a Benefice is perform'd by the Bishop, at the Motion or presentation of another who is Patron of the same, ... yet is Collation used for Presentation.' (4) Causes might arise out of any of these ways of admitting clerics to benefices or offices. The duty of admitting suitable persons to benefices and offices fell, at York, on the Vicar General. The relevant clause in his commission read-

(I) No. 26. (my numbering.) in Arch. Register. 30 F. 85. Y.D. R. (2) Cowell' ' Interpreter.' (3) Idem. (4) Idem.

' Also to admit suitable persons to any ecclesiastical benefice in the city and diocese of York, being vacant in any way, and to order those legitimately presented to it to be admitted and inducted with their rights. '. (I)

In addition a cause was often brought in set form for the admission and institution of a cleric to a benefice, presumably where there was another claimant. There are numerous examples in the Court of Audience or Chancery Court Books. (2))

'3. Inquirie of de iure patron. (atus .) '

(This was an enquiry into the question of who had the right to present to a benefice. It was among the duties of the Vicar General, ' To enquire duly without fail and have enquiry made about the right of patronage in any churches.' (3) When there was doubt about the person of the patron of a benefice the interested parties were cited to appear in court and a number of persons in the neighbourhood of the benefice, usually a mixed number of lay and clerical persons, were also summoned and examined on a set of articles. These were drawn up to discover who the patron was, who had presented last, etc The laymen and clerics, who had been sworn, and formed a sort of jury, then gave a verdict on the question. (4))

'4. Abilitie or sufficiencie of the Clarke. '

(Here presumably the parish ch clerk is meant. Sometimes the clerk was appointed by the incumbent , but some parishes in York diocese had the customary right of electing him. It was alleged in a cause in the Dean and Chapter Court, ' that by the space of ten, xx,xxx,xl, l, and lx yeres laste paste ended before the begynninge of this suite and for and duringe the

(I) See quoted commission. In Arch. Reg. 30 F 85. (2) ' Audience ' I570-74. F.
(3) Arch. Reg. 30. F. 85 . (4) For an example see ' Audience I570-74. Folios 7
I73.

time whereof man's memorie is not to the contrarie there haith bene and yet is a laudable custom and prescription (where by) the inhabitantes... or the more part of them have alwaies had and oughte to have the election and appointmente of the parishe clarke of Driffield aforesaide and that the inhabitants or the more part of them for and during all the tyme aforesaid so often as the parishe churche of Driffielde was destitute of a parishe clark e did electe and appointe a parishe clarke within the said parishe of Driffielde and not the vicar or anie other person whosoever.' (I))

' 5. Whether the Church be full or noe.

6. Avoydaunce of Benefices.'

(When a benefice becomes void of an Incumbent. The writer means either a suit to admit someone to a vacant benefice or a suit to deprive the present incumbent. A typical suit for the avoydaunce of a benefice was brought against a cleric on the grounds that he had not subscribed to the Archbishop's articles, and was therefore ' ipso facto' deprived and the benefice was therefore void. It was alleged ' that the said Christofer Robinson clerke was ordered and made preist in the tyme of the Raigne of Kinge Henrie the eight late of famous memorie in other forme of Institution consecratinge or orderinge then the forme set furth by parliament in the tyme of King Edward the sext or now used in the Raigne of our most gratious soveraigne laydie Elizabethe by the grace of God, etc, and in verie dede not before the feast of the natyvitie of our Lord in Anno domini I57I declare his assent nor dyed otherwyse observe, fulfill and performe thorder and forme sett downe and enacted in that behalfe in one statute or acte of parliament made in the

(I) RAS 60. F. 8. (D. & C. Crt. Bk.)

xiii th yere of the raigne of the saide soueraigne laydie . And that by reason of his not subscrybinge and redinge the said articles and testymoniall accordinglie the said Christofer Robinson was and is ipso facto depryved and the said parsonage of Westwangeton de Jure was and is voyd.' (I))

' 7. Spoliacon. '

(Spoliation and waste were very similar. Spoliation was ' a Writ that lies for one Incumbent against another, in any case where the right of the Patronage cometh not in debate ; As if a Parson be made a Bishop, and hath dispensation to keep his rectory, and afterwards the Patron present another to the Church which is instituted and inducted. The Bishop shall have against this Incumbent a Writ of spoliation in Court Christian .' (2) ' If one and the same Patron have presented each of them a clergyman and they both are admitted ; if one of them destroys the Profits, and gather them off the ground, the other has an Action against him in a Cause of Spoliation or Waste ; ' (3))

' 8. Grauntinge of faculties concerninge benifices.'

(A faculty is ' used for a Priviledge, or special Power granted unto a man by favour, Indulgence and Dispensation, to do that which by the Common Law he cannot do.' (4) A faculty does not seem to have gone generally under that name at York, the word used there was ' toleration.' Thus lay readers are given a ' toleration ' to read, and a cleric is given a ' toleration ' to retain two benefices. An example of a cause of this sort occurs in the Audience or Chancery Court, (5) where a toleration to hold one vicarage along with another is sued for.)

(I)' Chancery ' Ct. Bk. 1575-79 F 55. (2) Cowell's ' Interpreter.' (3) Conset. Part. I. Chap. IV. Sect. I. (4) Cowell's ' Interpreter.'

' 9. Deprivacons.'

(A suit brought to deprive some cleric of his benefice. (I))

'10. ' ast uppon a Benefice. (2) '

II. Debate uppon approbacons. '

(It is difficult to see what the writer meant here. Approbations come under testamentary matters . Probably the word is a missprint for appropriations, which it would be reasonable to expect in this section, and which are not mentioned elsewhere. Appropriations were the perpetual annexation of some benefice to a Bishop, College, or Dean and Chapter.' (3))

' I2. Pencons (pensions) procions, pmacone (permutation.) '

(' Pensions ' admit of several interpretations. They might be sums of money paid to clerics instead of tithes, or annuities settled on some church which were payable by another church. (4) It was besides common for a cleric resigning a benefice to resign it on consideration of an annual pension, a third meaning of the word. Not much has been written about clerical pensions of this last sort. As in so many other cases, the Bodleian precedent book gives a clear account of procedure. The ' Indentors upon condicion of resignacion of a benefice,' (5) read as follows.

' This indenture maid the said xxi day of the moneth of Novembre in the yere of our lorde god 1538 and the 29th yere of the reigne of kinge Henrie the VIII th witnesses that it is covananted and agreed betwixt Sir Thomas N. Vicare and incumbent of the parish church andvicaredge of Esington in Holdernes within the countie and dioces of Yorke of that one partie and for T.Y. of F. aforsaid Chaplayne of that other partie in maner and forme follow-

(I) For an example see ' Chancery' Crt. Bk. 1575-79. AB 27 F 114. (2) See page 9. (3) Ayliffe's ' Parergon ' P. 86. (4) Burn's ' Ecclesiastical Law.' Vol. II. (5) Bodleian. Bucks. Archd. M.S. d. 4. F. 17.

-ing that is to say that after a sufficient licence be obteyned at the vicare generall of the most reverent fayther in God lorde Edwarde Archbushope of Yorke, primate of Englande and metropolitaine of the same, to commune and conclude with any clerke upon a sufficient pension to be assigned and had of and in the said churche and vicaredge of Esington aforesaid to and for the releve and sustentation of the said Sir Thomas N. during his life natural that thene the said Sir T. N. shall resigne his said vicarege into the handes of the ordinarie having powre and jurisdiction thereof frely and absolutely and that the said Sir. Tho. Y. shall one (on) his partie maicke, labore, and obteyne to and for hym selff the collacion of the said vicaredge and present hym sellf and it to the ordinarie thereof to be inducte therein and fully bere, content and pay all manner of costes, chardges, and expenses to be had and maid as well of and for the said resignacion as for the forsaid decree and assignacion of the said pension with his collacion and induccion in the said vicaredge and the said Sir T. Y. shall bynde hymsellf with other sufficiente seurtes and also the said churche and vicaredge cawse to be bounden by the tenor and ordinance of the said decree and assignacion of the said pension or yerly annuytie by the forsaid decree there uppon maid ordeyned and lymitted during the naturall lief of the above named Sir T. N. yerely to be contented and paid well and treuly unto the said Sir T. C. or to his certaine attorney at twoo termes in the yere by equall porcions, that is to say at the feast of Ester and Mychaelmes.' The new incumbent was also obliged to discharge and acquit the retiring clergyman for any dilapidation charges which might be brought again-

-st him. The costs of the resignation, mentioned in the passage of the indentures quoted above , would be court costs, incurred in the suit brought by the retiring incumbent to have his resignation admitted.

The Bodleian Precedent Book gives several other documents of interest concerning pensions, among them are ' Licence to treat about a pension of the office of the precentor of Beverlac.' (I) ' Institution of a vicar saving a pension.' (2) and ' Letter to treat about a pension.' (3) The Vicar General's Commission gives him power to treat with clerics concerning pensions . (4) Causes concerning pensions, in the sense of an annual payment are quite common in the Court of Audience or Chancery. Synodals were usually coupled with pensions in causes of this sort, they were ' a pecuniary tribute paid by the inferior clergy to the Bishop ; and it is so called because it was usually paid at the Bishop's Synod or Visitation.'(5)

By portion the writer presumably means ' portion of tithes.' As Burn puts it ' one parson may prescribe to have tithes within the parish of another ; and this is what is called a portion of tithes.' (6)

Permutation , or permutation of incumbents, is the changing of one benefice for another. An example of this occurs in a cause (7)where two clerics , Thomas Hunte and William Waternes, appear in the court of Audience or Chancery and declare that they wish to have their benefices declared vacant so that they could exchange them. The judge complied with their request. Obviously the permutation of vicarages might be a fruitful source of discord.

(I) Bodleian Lib. Bucks. Archd. M. S. D. 4. F. I3. (2) Idem F 56. (3)Idem F. 94. (4) See clauses II and I2 of the quoted commission. (5) Ayliffe P.433. See AB 27 F 66 for an example. (6) Burn. Vol. II. (7) AB 52/92.

' I3. Composition.'(

(Composition was an agreement made between some person who paid tithes and the person to whom they were paid, whereby the tithe payer was discharged from the actual payment of the tithes. (I))

' I4. Tithes. (2) '

(Tithes were, along with defamation, the most common kind of cause at York. The collection of tithes was always an unpleasant business, and in Yorkshire there seems to have been a good deal of bitterness over it. There is an order from the Privy Council to the Lord President of the North ' uppon information given of great disorders used by parties interested in the collection of tithes to the spoile of the corn and the greate hinderance of the tillers .' The president was ordered ' with the assistance of the Bishops of York and Durham, to conferre how this inconvenience may be reformed, and an order to be sett down in that behalfe to continue hereafter.' (3))

' I5. Oblations, obvencons (obventions) '

(Ayliffe accounts for oblations and obventions together. ' Under the general name of Oblations we may reckon all such things, whether moveable or immoveable as accrue to the church by any Right or title whatsoever.' (4) After the 25 th Hen. 8. all oblations due to the priest were converted into alms of charity towards the maintenance of poor parishioners, ' but yet there are some occasional offerrings still remaining as at marriages, churching of women etc. And these are due rather by custom prescribed than by any written law.' (5) Ayliffe goes on to instance the gift of fowls to the parish priest at Christmas as an example of oblations. In another part of his work , in

(I) Ayliffe. P. 508. (2) Ras 59 F I4. (3) P. R. O. State Papers Domestic. 20th July I578. (4) Ayliffe P. 392. (5) Idem.

the section dealing with mortuaries he describes how some clerics make a charge called an obvention for meeting a funeral party as it crosses their parish, but, says Ayliffe, this is not really an obvention, which is ' a generical term for all Church dues whatsoever.' (I)

Some of the causes in the courts are almost certainly brought for obventions and oblations. One tithe cause for example (2) is brought for tithes ' and other ecclesiastical rights.' A cause brought in the same court (the Dean and Chapter) is for subtraction (i.e. non payment) of parochial rights and their speliation.' It is brought by one of the churchwardens. (3))

' I6. Mortuaries. '

(Mortuaries were a customary payment to the parish priest on the death of a parishioner, the Archbishop also took mortuaries on the death of clerics under his jurisdiction. More will be said of them in the chapter on testamentary procedure. (4) An example of a cause of subtraction of mortuary occurs in the Dean and Chapter Court. (5) Curiously enough mortuaries seem to have been heritable property, as there is a cause in the same court book (6) where one woman sues another for subtraction of mortuary.)

' I7. Bounds of parishes.

I8. Dilapidacons.'

(' Dilapidation, ' says Ayliffe ' is the Incumbent's suffering the Chancel or any other Edifices of his Ecclesiastical Living to go to Ruin or Decay, by neglecting to repair the same. And it likewise extends to his committing

(I) Ayliffe P. 380. (2) Ras 59 F 58. (3) RAS 59 F 55. (4) Ayliffe. 378. (5)RAS 59 F 343. (6) RAS 59 F I8.

or suffering to be comitted any wilful Waste in or upon the Glebe Woods, or any other Inheritance of the Church.' (I) There doe not seem to be any causes of dilapidation at York, possibly because most of the Archbishops there were wholesale dilapidators themselves. (2))

' 19. One clerke sueth another for the goods of his house.

Causes concerninge the Church and devine service.

I. Contributions pro ornamentis ecclies. (for the ornament of the church.)

2. Reparacons of the Church. '

(Causes of non contribution to the church fabric are not unusual at York.(3))

' 3. Goods of the Church witholden, as waxe.

4. Churchyards.'

(The reconsecration of churchyards lay in the province of the Vicar General . See his commission. (4))

'5. Churchyards unclosed.

6. Trees taken out of the Churchyard.

7. Fightinge and brawlinge in a Church or Churchyard.'

(This was quite common, as the usual place for people of the neighbourhood to meet was the churchyard on Sunday. An entry in the Court of Audience or Chancery Court Book (5) records that ' On this day hours and place James Tennande and Winifrid Fawcett of Kettlewell in Craven appeared personally, who confessed judicially ' that they, falling at variance together did lay violente hands upon another in the churche yarde of Kettlewell aforsaid whereby by the Lawes and statutes of this realme they were Ipso facto excom-

(I) Ayliffe P. 217. (2) See Browne Willis' account of Young and Sandys in ' Survey of the Cathedrals.' See also the account of Pier's dilapidations in the account of testamentary procedure. (3) RAS 59 F 527. (4) Archiep. Reg. 30. F 85. (5) AB 27 F. 74.

-municate.')

' 8. The right to have a curate for service. '

('If in any Village or Hamlet,' says Conset, ' any Chapel has anciently been founded and the Rector or Vicar in whose Parish the Village or Hamlet is Ꞓ Situate, was wont formerly to celebrate Divine Service there by himself or his curate, if this is denied to be done, there lies an Action in that case before the Ecclesiastical Judge (viz) any Inhabitant of the said Village, may Sue the Rector or Vicar in a Cause of Subtraction of Divine Service in such a Chapel.' (I))

' Curates and clarkes.

10. Comon prayer and refusinge to come thereunto.

11. Not frequentinge divine service.

12. Disturbance of divine service.

13. Refusing to come to the Communion.

14. Refusinge to have a child baptized.

15. Buriall.

16. Digginge upp of buried corpse.

Correccon of crimes in generall.

... Apostacie.

... Blaspheme.

3. Idoletrie.

4. Sacraledge.

5. Heresie.'

(I) Conset. Part. I. Chap. IV. Sect. I.

(This was not usually tried in the ordinary courts at York but went instead into the High Commission. An occasional cleric with Popish leanings was proceeded against in the Court of Audience or Chancery. One such was John Porter, but his deviation from orthodoxy was not regarded as his most serious offence, as the first article enjoined to him was that ' hee shall put awaie furth of his hous all the women hee keepeth.' The fourth article was-

' Also he shall upon sondaie next after Michaelmas daie nowe nexte cominge make an open confession of his faithe before the people in the churche of Drophill aforesaid affirminge and protestinge that the religion nowe sett furthe is accordinge to the worde of God and to bee embraced of all Christians and that hee shall defie all poperie and popishe religion protestinge and promisinge never to serve in the Church or elsewhere after that sorte.' (I)

'6. Swearinge.

7. Periurie.'

(' If Perjury be committed by any Witnes or principal Party (i.e. the Defendant) in their Depositions or Answers had or made, in any Ecclesiastical Cause ; the party suffering damage by the Perjury (or any else, as in a Cause of Correction) may promote the office of the judge (for their souls good) and proceed before the Ecclesiastical Judge against the perjured person, in a Cause of Perjury : or rather may cite him to answer certain Articles touching his Soul's health, and especially manifest Perjury committed.'(2))

' 8. Lesio fidei in a matter spirituall.'

(That is the breaking of an oath taken in a spiritual matter or in a spir-

(I) ' Chancery ' Court Bk. 1575-79 F. 220. (2) Conset Part I. Chap. IV. Sect. I.

-itual court.)

' 9. Subornacon of periurie in spirituall corts.'

(In other words, the persuasion of a witness to bear false witness. This was probably extremely common at York, but naturally the evidence of it is difficult to find. The interrogatories on which the witnesses were examined suggest that the registrar expected to find that some of them at least had been bribed, and they usually include questions such as ' What do you expect to get if the party for whom your evidence is given wins the cause ?' to which the witness replied ' my expenses and nothing more.' An instance of subornation of perjury which ended very unhappily is given in the following deposition, by a William Wyles of Kylnewicke near Watter in the diocese of York, tailor. He deposed.

' That aboute xii or eighte yeres agoe to his remembrance Martin Wyles named in this allegacion was examined as a witnes on the partie and behalfe of the said Marmaduke Langdaile in the spirituall courte at Yorke and was broughte to Yorke in a carte to be examined and was carried home in a carte after his said examinacion after which the said Martin Wyles his father semed to be sore trobled in mynde and would maike a noise in his slepe in the nyghte tyme and in the ende maid himselfe away and was guiltie of his owne bloode all whiche he knowes to be true because he and his said father lived in hous together untill his unfortunate deathe and this examinate dyvers tymes askinge his said father what was the cause that he was so sore troubled in mynde answered that he was not worthei to lyve upon the earthe and confessed to this examinate that the said Mr. Marmaduke Langdaile gave him an angell of gould for his comynge to depose in this cause which after-

-wards and before his said deathe he gave to twoo of this examinate's chil-
ren. And other things he does not know to depose and furthermore he says he is not learned, instructed or salaried, nor of kin etc., nor does he care etc (which party will win.) ' (I)

Other methods might be used to suborn witnesses. One witness, whose husband wanted a divorce from her, was kidnapped and kept in the house of a relative until she agreed to father her new born child on the parson of the parish. The statement in which she subsequently retracted her false testimony forms a vignette of life in Elizabethan Yorkshire. It has accordingly been given entire in an appendix.(2) (3) It is worth noting that this divorce was apparently obtained in the Arches. Possibly the woman's husband thought that the judges might be more venal and less difficult to deceive than those at York.)

'IO. Simonye.'

('If a clergyman committ Simony in obtaining an Ecclesiastical Benefice he may be convened either by the Judge his meer Office or at the instance of a Party.' (4))

'II. Usurye. '

(According to Tawney causes of usury were uncommon in England during this period. (5) In view of the scarcity of published court records for this period this is perhaps too bold a statement, as are his references to the 'ever more discredited ecclesiastical jurisdiction,' and ' a time when , except for the Court of High Commission, the whole system was in decay.' Tawney mentions Grindal's injunction to his subjects to present usurers to their ordinaries (6)

(I) RAS 8/5. File for Marmaduke Langdaile c. George Watson. (2) Appendix I. (3) ' A voluntarie recognicion etc.' AB 24 F 306. (4) Conset Part I. Chap. IV. Sect I.(5) 'Religion and the Rise of Capitalism.' (6) Idem Chap. III. ii.

' I2. Violacon of the Saboth.

I3. Forgeries of lettres testimonials of orders, of institucions.'

(No causes of forgery of letters testimonial of orders or of institutions have come to light at York but it may be useful here to notice a rather remarkable case of forgery of letters citational, from the point of view of the procedure involved. As far as can be gathered from a rather confused document (I) someone had forged ' certain citatorial and inhibitory letters, dated Ist May (I544.) in the name of William Clifton, William Farcher, and William Laughton, delegates of the King as it was asserted, as appeared by the commission made to them in this part, dated at St. Albans on 30th November, and sealed with the seal of Mr. Robert Ward, Official of the Archdeaconry of the East Riding.' They contained a citation citing a certain Roger Kellett of Burneham, William Fawkes of York city, notary public (the grandfather of the famous Guy Fawkes) and William Barse of Kextone, to appear before the commissioners mentioned above in the parish church of Pontefract . The most remarkable thing about this citation was that it was a hoax. The seal was a forgery, and Mr. William Clifton, though laid low by old age and infirmities, hastened to make a statement, in the presence of William Fawkes and other witnesses, asserting that he had never decreed for the force of the citation or for anything else in the letters citational, that he had never undertaken the commission mentioned in it, and that he had never attached Mr. Robert Ward's seal to the citation. Obviously some unknown person had forged the letters citational in question to take William Fawkes and his companions across country to Pontefract, either because he wanted them

(I) Bodleian Lib. Bucks. Archd. M. S. d. 4. F 48.

out of the way, or because he had some grudge against them.)

' I4. Errors of Doctrine.

I5. Frequentinge of Coventicles.

I6. Bigamie.'

(This was not commons, but was not unknown at York. (I))

' I7. Incontinencye. '

(Otherwise known as fornication or adultery. Nor distinction seems to have been made between these two crimes at York. It was particularly rife in Yorkshire at this time. Sandes, in a letter to Burghley, remarks. ' The meaner people here is idle, by reason whereof the country is full of beggars and the lawes provided in that behalfe neglected. They are given to moche drinkinge, whereof followeth greate inconvenience , as well appeared by the greate number of fornicators presented in this my last visitacion.' (2) This statement is amply borne out by the court records, particularly the Court of Audience or Chancery Court Book I585-95, which records large numbers of causes against offenders of a higher social class than that referred to by Sandes, indicating that it was a vice common to all classes. Most of the co-offenders were servant girls. (3))

' I8. Sollicitacon of a woman's chastetie.

I9. Filthie Speech.

20. Diffamacion.'

(This was extremely common in Yorkshire at the time. In the Dean and Chapter Court Book (4) for I580-94 the defamation causes outnumbered the others. Similarly there are more significavits filed against people concerned in defamation causes than any others (5) Grindal regarded [illegible] defamation

(I) 'Chancery ' Act. Bk. I575-79. F. 69. (2) B. M. M. S. S. Room. Lansdowne 27/I2. I6th April I578. (3) AB 52. (4) RAS 59. (5) P.R.O. C. 85. and see last Chapter.

as a vice to which people in the north were particularly prone. ' They deface me by all slanders, false reports, and shameless lyes, though the same be never so inartificial or incredible, according to the northern guise, which is, never to be ashamed, however they bely and deface him who they hate, yea though it be before the honorablest.' (I)

Defamation in Yorkshire probably arose from other motives than mere spite. Although 'flyting' was doubtless attractive for its own sake, it could be used to damage the reputation and therefore the personal standing of an enemy. People in Yorkshire were more ignorant, and therefore more dependent on common opinion than in the south. It will be described later how Westmoreland, travelling through Yorkshire, was horrified to find himself met, wherever he stopped, by the rumour that the Queen had declared herself his enemy. Grindal himself evidently felt the force of the slander campaign launched against him, as did Strafford many years later. A sufferer from the same cause in a humbler sphere was a chaplain called William Bell. His case well illustrates the damage that a rumour deliberately set about might do. A witness in the cause deposed. ' That Robert Errle came into the howse of Alexandre that maried Geffray's wife, dwelling in Grap Layne and there he founde John Bell and this deponent sitting at the table. And then Robert Erle said unto John. ' Brother I have beyn to see yow at yor howse and there I founde a prest sitting with yor wiff and if ye knew so moche by him as I here say, ye wold not trust hym. And then the said John Bell asked why. Then the said Robert Erle answard and said that he hard one or two say that they founde the said William about the Mason's loge within the mynster

(I) Grindal's ' Remains.'

garth upon All Holleys nyght last past with a wenche...'

Another witness in the cause deposed that ' he haith harde divers folke say viz. Thickpenny's wiff, Thomas Gregges wiff and others that when they were disposed to gyve hym ys donacion afore they intend to gyff him no more, except he could clere his self of this cryme.' (I))

' 21. Drunkenes.'

(There do not seem to be any causes of this sort against the laity, but there is one cause of deprivation of a clergyman on the ground of drunkeness, just before this period begins. The cleric in question, Robert Fox, was on occasion so drunk that he could not sing evensong, and one witness deposed that ' he hathe hard the said Sir Robert divers tymes in redinge of the gospell not onelie chaungeinge the woordes but also the Sentence thereof.' The vicar put forward the original defence ' that his sayd drunkenes did come ...by ye feblenes Imbiciltie and weyknes of hys Brayne and not by his wiful and sensuall and ungodlie Luste, mynde and appetyte..... soever (whenever) he did drynke any wynne, stronge and myghtie Bere, or ayle he did drinke but a little and a mesurable quantitye thereof , thynkinge and believinge in hys owne mynde yt so litle a quantetye shoulde not nor wolde not have trobled hys Brayne nor have mayde him drunken.' (2))

' 22. Negligence in an ordinarie.'

(One of the clauses in the Vicar General's commission empowered him to repair the negligence of the ordinaries of the province.)

'23. Contempt of Ecclesiastical Jurisdiction.'

(I) RAS 20B I500-I570. (2) RAS 4/24.

(This might be of various sorts , either a refusal to obey the orders of the court, or a hindering of the mandatory in the exercise of his office, or the wrongful exercise of spiritual jurisdiction. Edmund Frobisher, for example, the uncle of Sir Martin Frobisher, refused to hand back a mandate which he had asked leave to inspect, ' in contempt of the court.' He also put the mandatory in fear of his life. (I) A mandatory who had gone in searhh of a party to her parish church deposed ' that the said Roger Heyrste, parishe clerke, perceyvinge the said Hamonde, Mandatarye aforesaide to have a citacion frome this courte Agaynste the saide Eyre, beyinge in the said churche personallye presente at or after divine service the said eleventh day of May, beyinge Sonday, sparred the churche dore against the said Mandatarye, kepyinge him frome goinge to the said Katerine Eyre to cite her by reason whereof the said mandatorye watched at the dore wher she and other parisheners did craftelye in favor of the said Kateryn Ewre open an other dore of the said churche, not beinge accustomed to be opened but for other necessaries of the churche and so by his crafte decyte convened her away that she shoulde not be cyted in contempt of the saide courte and Jurisdiction of the same.'(2).

James Asheton and Richard Dove, who had been exercising jurisdiction in Snaith and Selby parishes and in other places, whereas the jurisdiction in these parishes belonged to the Archbishop, were accused of having acted ' in contempt of law and his grace's jurisdiction.' (3))

' 24. Laying of violent hands uppon a clarke.'

(This resulted in the party offending occurring an ' ipso facto ' sentence

(I) RVIIA. 37 F 12. Excheq. Crt. Bk. (2) RVII G. 954. (3) AB 52/92.

of excommunication. A ' Testimonial of Absolution for laying violent hands on a priest, ' given in the Bodleian Precedent Book. (I) describes a typical incident of this sort. An earlier document , the ' Citation for laying violent hands on a person.' (2) suggests that while excommunication was ' ipso facto ' incurred by this act it need not always be published, as the document calls on the offender to appear and show cause why excommunication should not be published.)

' Ecclesiastical censures.

I. Excommunicacon.

2. Familiar conversinge with Excomunicat persons.

3. Suspencon ab ingressu Ecclesie.

Other causes.

I. Expenses ad fees in all chiefe causes of the Judges, Register, Proctors, Apparitors.'

(Ecclesiastical lawyers might sue for their fees. (3))

' 2. Appeales.'

(These were fairly common at York, considering the size of the diocese and province. For examples see the Court of Audience or Chancery Court Books.(4))

'3. Double quarrels.'

(A double querele is defined by Conset as follows. ' If a Clergy-man is presented to a Church and doth exhibit this Presentation before the Bishop of the Diocese, or his Vicar General in Spiritual things, who has power to institute and doth request to be instituted by him, if the Bishop doth ref-

(I) Bod. Lib. Bucks. Archd. M.S. d. 4. F. I3. (2) Cam. Lib. Addit. M. S. 3II5 F. I6. (3) See Conset Part I. Chap. IV. Sect. I. (4) e.g. AB 27 F. 30.

-use to institute and admit him he may complain thereof, to the Official of the Arches, or to the Judge of the Court of Audience, which Judges are wont to write back to the Bishop in form of law, to the following Effects, and that Rescript is called a Double Querele.' (I) The double querele orders the Bishop or Vicar General to institute the cleric, if it is disobeyed the Bishop or Vicar General is cited to show cause why the cleric has not been instituted in the benefice, and a cause is begun to affect his institution. An example of a double querele is to be found in the Court of Audience or Chancery Court Books. (2))

' 4. Citacons.'

(It is difficult to see what the writer had in mind here, possibly the causes of appeal which might arise if a citation was not properly made out or deliverdd .)

'5. Visitacons of Hospitalls.

6. All certificates of Bishops and Ordinaries.

7. Execucion of a sentence given in an Ecclesiasticall Court.'

(There were various causes which might arise after sentence had been given. Among them were : causes arising out of non performance of penance or not certifying it (3) not paying expenses,(4) not marrying when ordered to do so in a matrimonial cause, (5) not receiving or supporting an illegitimate child when ordered to do so. (6))

So much for the abstract. Some of the causes it mentions do not seem to have occurred in the courts during this period on the other hand an examination of the court books gives a number of causes not mentioned in the list.

(I) Conset Part I. Chap. IV. Sect. I. (2) ' Audience' Crt. Bk. I570-74. F.5. (3) Mentioned in signficavit P.R.O. C.85 F. I9I/6. (4) Idem I9I/2. (5) Idem I92/35. (6) I90/ 23.

Among these are : causes brought against a sequestrator to force him to render an account, (I) against the violater of the sequestration of the fruits (church income) of a rectory, (2) against persons who have refused to pay procurations due by reason of a metropolitical visitation (3) against persons who have taken part in a clandestine marriage (4) or have been present at the same (5) against persons who have not performed their purgation when ordered to do so (6) who have not appeared to give testimony when asked to do so (7) or who have not appeared to reply to the libel.(8)

These ' additionals ' might be augmented by a search amongst the cause papers, but it is probably more to the purpose to let the list of causes in this chapter stand . It represents what might be called the 'normal' kinds of causes tried in the courts at this time, and it may be compared with the statistics given in the next chapter concerning the frequency with which these causes might occur in the various courts. Here as elsewhere the cause papers are to be distrusted. Although illuminating for the purposes of the social historian they cannot provide a quantative estimate of the different kinds of causes tried at York, as no one can tell what time, the rat, and the Victorian registrar's friend has left us. Accordingly any attempt to deduce the incidence of tithe causes, for example, from the cause papers is futile. As Archdeacon Hale pointed out an important cause entails a bulky file, and it might be added that it is the bulky files which a dishonest or careless registrar will rid himself of or lose ; it is therefore the less important cause papers which survive. (9)

(I) 'Audience' Court Book I570-74. (2) Idem. F.32. (3) 'Chanc Crt. Bk. I575-79 F. 19. ' Procurations'are ' certain sums of money which parish priests pay yearly to the Bishop or Archdeacon ratione visitationis.' Ayliffe P. 429. (4)'Audience.' Crt. Bk. I579-84 F. 49. (5) Idem. F. 65.(6) P.R. C.85 I93/3.(7) P.R.O. C.85. F. I9I. 24. (8) P.R.O C. 85. I93/3I.

(9) ' A series of precedents and proceedings in Criminal Causes.' W. Hale. I84

CHAPTER TWO. THE FIVE COURTS.

The five courts to be discussed here represented only a part of the hierarchy of the ecclesiastical courts in the province of York, which in turn was only a part of that of England as a whole. A contemporary writer on ecclesiastical courts has given a good, if not absolutely complete, picture of the whole system of jurisdiction in England.

' Ecclesiastical courtes be many in number and divers in nature, whereof the chiefe is the Convocations of the Clergie of the whole realms of England Wales, which is alwayes assembled together with the estates of parliament. And it consisteth of the Deanes, Chapters, Archdeacons, and procurators of all ye Cathedrall Churches. The nexte be the two provynciall Synodes of Canterburie and Yorke, to the latter of which there are only three bishoprics subject and that is to say, Durhame, Carlile, and Chester...*

After this be the generall Courtes of the Archbishope of Canterburye that is to saye the Consistorie or Courte of the Arches for Appellations, the Courte of Audience or the Chauncellor's Courte, which was woont to be in the Archbisshope's howse, the Commissaries or the prerogative Courte for probate of testimonies' (a slip ; the writer meant ' testaments.') ' And the Courte of faculties for dispensasions. Then followe the specialle Courtes of this Archbisshope . That is to saye his Consistorie holden by his Commissaries at Canterburie for his owne Dioces. And lastely the Courtes of those peculiar Deanaries whiche doe belonge to him and do lye in the Dioces of other Bishopes The other Archbishope and eache other Bishope also hath in his owne dioces the Courte of his Chauncelor and the courte of his Archdeacon or his official.' (I)

(I) B.M. M.S.S. Room. Julius F. 6. 220. * The diocese of Sodor and Man was probably little known in southern England.

While the arrangement of the different spheres of jurisdiction in the diocese of York, especially those of special officers such as the Dean of Christianty of York (I) are of extreme interest the only jurisdictions with which this chapter is immediately concerned are those which fed the diocesan and provincial courts of York with appeals. Something must also be said about the Court of Delegates, which was the court of appeal from the Archbishop's diocesan and provincial courts and from the Dean and Chapter court.

There were two diocesan courts at York, the Consistory Court and the Exchequer Court. Of these only the Consistory was concerned with appeals. The Consistory heard appeals from the Archdeaconries of York, and also on occasion from the Consistory courts of the bishops of the province. There were four dioceses in York province ; Chester, Durham, Carlisle, and Sodor and Man. The Bishop of each of these dioceses had a Consistory Court, which heard appeals from the courts of the Archdeacons in the diocese and was also a court of first instance. The judge in the diocesan consistories was the Bishop's Chancellor or Official or the Bishop himself. (2) A litigant who felt himself aggrieved by the sentence of a diocesan consistory might appeal to the Archbishop of York's Consistory or to his Court of Audience and Chancery. If he still felt that he had not been given satisfaction by the Archbishop's judge he might appeal to the Queen in Chancery, that is, to the Delegates' Court.

The cause of William Lloyde of Halghton, squire c. Henry Byllinge and others was brought to the delegates by a series of appeals, and is describ-

(I) See Appendix II. (2) Tanner's ' Tudor Constitutional Documents 1485-1603.' P. 303. Holdsworth ' A History of English Law.' Vol. I. P. 599.

-ed in the tenor of the sentence in the Delegates Court as.

' A certain testamentary cause which was formerly pending before David Yale, Doctor of Laws, Vicar General of the most Reverend Father the Bishop of Chester and then devolved by a certain appeal to the Fair Court of Consistory of the most Reverend Father and Lord the Archbishop of York and now at last has been interposed before us in this court by virtue of a certain appeal from the judges of the said Consistory Court of York to our aforesaid Lady the Queen in her Court of Chancery.'(I)

Appeals might also devolve from the Archdeacons' courts in York diocese and be heard in the Archbishop's courts. The powers of the archdeacon were customary, and varied from diocese to diocese. Like the Bishop, he might have an official to help him. (2) The law manuscript preserved in the Dean and Chapter Library and already referred to is worth quoting here, as the writer probably had the diocese of York in mind.

' The diocese of every Bishop is divided into Archdeaconries according to the extent of the Bishopricke whereof some are by prescription, as the Archdeaconry of Richmond, some are by the law, and some are by covenante between the Bishop and the Archdeacon. When the Archdeacon hath his jurisdiction by covenant that doth not take away the jurisdiction of the Bishop as the Archdeacon by prescription ' de jure ' doe, but if the bishop do hold plea or intermeddle with any thing within his jurisdiction the Archdeacon may have an action of Covenant against him.' (3)

The two provincial courts of the province of York were the court of Audience or Chancery and the Prerogative Court. (4) As I understand, no

(I) P.R.O. Del. 5/2. 95. (2) More will be said of the Archdeacons and Rural Deans in Appendix III. (3) M.S. in IO.L.I8. D.& C. Lib. York. (4) Eccles. Courts Commission Report I883 Hist. App. I. 5I.

court books of the Prerogative Court have survived. It is therefore difficult to say much about it. It dealt with ' bona notabilia ' or goods left by a deceased person who had property in more dioceses than one.

The Audience or Chancery Court heard appeals from the Consistories of the bishops of the provinces and also from the Archdeacon of York diocese.(I) It will be seen that there was not the clear distinction between diocesan and provincial business that might be expected.

Appeal from the archbishop's courts lay to the Queen in Chancery, by the provisions of the statute of Henry VIII. The pertinent clause of the Act is as follows.

' For lack of justice at or in any of the courts of the archbishops of this realme, or in any of the king's dominions, it shall be lawful for the parties grieved to appeal to the King's Majesty in the King's court of Chancery ; and that upon every such appeal a commission shall be directed under the Great Seal to such persons as shall be named by the King's Highness his heirs and successors.' (2)

The delegates court was not really a court at all but an impromptu committee gathered for every new cause. It was usually composed,at this time at any rate of members of Doctors Commons and civilians. (3) In causes of greater moment Bishops and more eminent civilians such as the Master of Requests might be included.

There do not seem to be a great number of appeals in the Delegates records from York, though it is often difficult to tell when an appeal has

(I) And from the other Archdeaconries within the diocese. (2) 25 Hen. VIII c. I9. 4. (3) Holdsworth 604.

been brought from York, as the court before which the original hearing took place is not always noted. A list of the appeals (not an exhaustive one) includes 12 causes from York to the Delegates. Probably there were not very many. (1)

The appeal from the Dean and Chapter court also lay to the Delegates Court, as might be expected in the case of a peculiar. (2)

Some incidental information about appeals to the delegates is given by John Rokeby's nephew. Speaking of Rokeby he says . ' In the course of two and thirty years he supplied the judicial place at York he never had sentence annulled by appeal but only one, and that was given by a chaplain of his called Sir Anthony Iveson, in his master's absence.' (3) The implication is that other judges were not always so fortunate.

Before going further it may be useful to mention the five courts individually and characterise them very briefly, so that a general picture of the courts may be kept in mind as they are dealt with in turn.

Briefly then, the Consistory Court was the Archbishop's court of the diocese ; it was a court of first instance from both the diocese and on occasion the province. Normally it would be expected to deal with appeals from the diocese, it also dealt with provincial matters of appeal.

The Court of Exchequer was not, as might be expected, a variant of the Prerogative Court of Canterbury, but had a constitution original to York. It was concerned purely with testamentary matters , exercising jurisdiction over the property of persons who had died intestate in York

(1) See Appendix IV. (2) See RAS 21/69. (3) B.M. M.S.S. Room Addit. M.S. 24470 F. 565.

diocese, either subjects of the Archbishop, or travellers. It also had jurisdiction over the property of unbeneficed clergy. Other duties conferred by the commission of the holder of the Exchequer Court do not seem to have been exercised in the court, such as the holding of general synods for example.

The Prerogative court seems to have been copied from the Canterbury Prerogative Court. It dealt with ' bona notabilia ' and other testamentary matters. How far it was active at this time is difficult to say because of the lack of court books.

The Court of Audience or Chancery was the appeal court of the province and the diocese . It had much to do with causes concerned with ecclesiastical persons and livings, with visitation causes and correction causes,also with causes concerning the administration of the diocese. It had testamentary jurisdiction over the property of beneficed clerics.

The Dean and Chapter Court was a peculiar, its jurisdiction was contentious or immediate , depending on the localities from which it drew its causes. It is characterised by causes between party and party and a steady flow of testamentary matters.

So much for the general picture. It will have occurred to the reader that there is little definition in the province of the various courts. For example they all dealt with testamentary matters. Probably the different courts were still inclined to encroach on each others preserves, indeed there are definite indications of this, as in the case of the dispute over the jurisdiction of Snaith, which was cited as an example of contempt in the

opening chapter,(I) certainly the comparative definition of Victorian days had still to be attained.

THE CONSISTORY COURT.

The Consistory Court had as its full title ' The Fair Court of Consistory of the Archbishop of York.' The use of the adjective ' fair ' in this connection was probably adopted in imitation of the title of the Court of Arches in London, which was known as ' Alma Curia Cantuariensis de Arcubus.' According to Conset it was applied to the southern court ' from the effects or by metaphor, being the channel whence justice flows like a crystalline stream,' (2) while Oughton remarks ' both because the suitors of the province of Canterbury were accustomed to shelter themselves within the bosom of this court of the Archbishop as children cling to the nutritious breast of a mother ; as also because the advocates of the court were most illustrious in themselves, and their proceedings were marked by superior regularity and decorum ; and the strictest and most becoming attention to the rules of practice, the court became distinguished by the commendatory title of 'Alma,' that is fair, pure, and nourishing.' (3) While a great deal of this is rhetoric, it is worth noticing that it did not provoke comment for the principal courts of the Archbishops to have the title ' fair ' attached to them. No one, on the other hand ever thought of talking of the ' Fair Court of King's Bench.'

The judge who held the Consistory was called ' The Official of the

(I) P. 24. (2) Conset Part I. Chap. I. Sect I. (3) Law. xv.

Fair Court of Consistory.' (I) At a later date he was known as the ' Official Principal of the Court of Consistory,' (2) while his office was referred to as ' the Office of the Officialty of the Court of Consistory.' (3) The Official of the Consistory was frequently the Vicar General as well, John Rokeby, Robert Lougher, and John Bennet seem to have been all Vicars General and Officials of Consistory at the same time, and Robert Lougher was given a joint commission for both offices. (4) Nevertheless the office of Official does not seem to have been inseparably attached to that of the Vicar General. John Rokeby and Walter Jones for instance were both Vicars General of Archbishop Thomas Young, but only Rokeby was Official of the Consistory. (5) The Officialty could be held by a single person or by two persons acting jointly ; it was held in this way by William Palmer and Richard Percie in I576. (6) A commission to the Officialty could issue during the vacancy of a see, and Dean Matthew Hutton, as Custos, gave Rokeby a new commission.(7)

The style of the Official, as set out in the court books was as follows. ' The venerable man Mr. Richard Percy, Doctor of Laws, Official of the Fair Court of Consistory, judicially and publicly sitting as a tribunal, in the Consistorial place within the metropolitical church.' (8)

The commission by which the Official sat was a wide one. Allowing for a few variations in form it remained much the same during the time of Elizabeth. The powers it conferred were as follows.

(I) Cons. Crt. Bk. I586-7 F I05. (2) Eccles. Crts. Commission Report I883. (3)AB 24 F 94. (4) See his letters patent in 'Audience' Crt. Bk. I579-84. (5) See his delivery of the Office of the Officialty. Arch. Reg. 30 F. 4I. (6) Sandes Register F. I3. (7) Arch. Register 30 Fs. 5I,66. (8) Cons. Crt. Bk. I586-7 F I05.

The Archbishop conferred on the Official his powers and the power of canonical and ecclesiastical coercion to take cognisance of and proceed in all causes which might come into the Consistory out of mere, mixed, or promoted office and to hear, discuss, and terminate them.

He (the Official) could admit and receive witnesses, letters, instruments, and any other kind of proof to be produced before him in the causes mentioned above, and reject them if need be.

He could commit the examination of the witnesses to some suitable person or persons. He could give interlocutory and definitive sentences and also give a rescript and inhibit in form of law in any cause or causes devolving on the Consistory by way of complaint or appeal and proceed canonically and terminate these causes of appeal and complaint.

He could create and ordain advocates and proctors in the court of Consistory from time to time so long as they were suitable and sufficient persons. He could substitute one or several substitutes in his place and in his absence and ' do exercise and expedite all and singular other things which shall be necessary or opportune in and in respect of the premisses and any of them, and which is known in any way to belong to the office of this Officialty of the Consistory, even if they demand a special mandate.' (I)

These powers might be granted for life (2) or so long as the good pleasure of the Archbishop lasted. The Archbishop himself could try causes in the Consistory if he wished to, as is shown by a letter which Sandes wrote , describing how he had called a malefactor ' into my Consistory,' and

(I) Grindal. Register 30 F 85. (2) AB 24. Crt. Bk. 'Audience ' 1579-84. F.94.

acted as judge. (I)

The Consistory was unique, if the Dean and Chapter is exeepted, in having a court room of its own, ' the consistorial place,' where some of the other courts were also held ; this is described in the court books as ' the consistorial place within the cathedral and metropolitical church of York.'(2) Where this court room was is something of a mystery, Camidge, the York antiquary says definitely that it was situated in St. Peter's prison, part of a collection of buildings adjoining the Minster which were demolished in the nineteenth century. (3) This situation for the court would seem to be scouted by the fact that the court heading specifies that the court was held inside the cathedral, but it may be that in the time of Elizabeth the whole close was so crowded with buildings that there was confusion as to where the Cathedral ended and the additions to it began. Sandes says quite clearly in the letter referred to above that it was ' in the Cathedrall Churche.' (4) A stray reference in one of the institution books mentions ' a certain box-room (cistam) near the consistorial place.' (5)

On the whole probably the most likely site for the court is the one which Drake gives in his plan of the Minster, as it was before the great fires, (6) near the north door.

The Consistory also possessed another of the focal centres of the courts in the ' scriptorium' or writing room of the court, in which the proctors and advocates seem to have congregated when there was nothing for them to do in the courts. They also appear to have done a good deal of

(I) Lambeth Palace Lib. Cod. Tenison 698. (2) Cons. Crt. Bk. I586-7 F I9. (3) William Camidge, ' Guy Fawkes,' ' Peter Prison and the Old Bridges on the Ouse.' in Burdekin's ' Almanack.' (4) Lambeth Palace Lib. Cod. Tenison 698. (5) Act Book I553- I57I F. I38. (6) Drake. ' Eboracum.'

business in the form of writing up the court books, substituting themselves and being constituted by their clients. The writing room is described as ' the writing room of the Fair Court of Consistory of York notoriously situated within the Close of the cathedral and metropolitical church of York.' (I) The room was probably situated in the buildings on the north side of the Minster, no doubt it had desks and possibly a fire, which the court room certainly did not possess, so that the lawyers could make themselves comfortable between hearings.

The Consistory also possessed an ' officium ' which seems to have been just what the name suggests - an office ; it probably contained the archives of the court. There were two keys to it which indicates a room distinct from the other separate offices of the courts. (2) On the assumption of Archiepiscopal jurisdiction into the hands of the Dean and Chapter on the death of Thomas Young, Richard Frankeland could only produce one key of the Consistory office, though the offices of the other courts had two, and two were handed over for the Consistory at a later date. (3)

The Consistory shared its registrar, Richard Franklande, with the Court of Audience or Chancery, and also its seal, which is described as 'the seal of the office of the Vicar General in Spirituals, which was used as much in the Court of Audience or Chancery as in the Court of Consistory.' (4) No seals for this period seem to have survived at York, but an example of this seal exists in the British Museum ; it is described as a pointed oval, two and a quarter inches by one and five eighth inches. The design is ' in a gothic niche with carved canopy and tabernacle work at the sides, the Arch-

(I) RVII A 38 F I5. (2) The other offices were those of the Audience or Chancery Court and the Exchequer. (Arch. Reg. 30. F. 4I.) (3) Idem. (4) Idem.

bishop on a bracket or corbel full length , lifting up the right hand in benediction, in the left hand a crozier.' (I) The legend is ' Sigillum ** Vicarii ** Generalis ** Archiepiscopi ** Eboracensis.' (2)

As has already been indicated the ' consistorial place ' or court room has dissappeared. Fortunately however it is possible to tell what it looked like, as there is a Consistory court room of Elizabethan date in Chester cathedral.

' Court room ' is perhaps misleading, ' court enclosure ' is nearer the mark. The court consists of a sort of pen, a square formed of low wooden screens on three sides, the fourth side consisting of the seats for the judge , assessors, or surrogates. At the foot of the three stalls (one raised above the others) which make up this side there is a bench on which the notaries public sat. Filling almost the whole of the pen is an enormous table, which barely allows room to walk around the inside of the pen, so narrow in fact is the passage way that a special step has been contrived in the foot of the dais on which the three stalls stand which can be slid out to admit the ascension of some rheumatic chancellor and can then be slid back to allow a passage round the front of the table. Round this table sat the parties and their proctors. The onlookers, who seem to have consisted of parties waiting to be called, mandatories , and unemployed proctors and advocates, as well as casual visitors and craftsmen employed in the cathedral must have stood outside the pen.

The powers of the Official, which have been touched on above, require to be supplemented by a survey of what the practice of the Consistory Court

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(I) B.M. M.S.S. Room, Seal Catalogue No. 2369. (2) Idem.

was during this period. Such a survey has been made of part of the Consistory Court Book for I586-87.

Before going on to examine the work of the court in detail it would be as well to say something of the way in which the statistics from which this examination has been made have been obtained , since this is the first ' sample from a court book.

It was usual for the first entry of a new cause to be particularised with a descriptive label such as ' Office of the judge against John Bradford in a cause of detention of synodals,' or ' M. against N. in a cause of tithe.' This descriptive tag, however, does not seem to have always been attached and after the first hearing it was ommitted, so that it is usually, if not impossible, at least very difficult to say what a cause was about if for some reason the record of the first hearing is not available. The method of recording causes is such that if the ' sors principalis ' or matter at issue, is not mentioned in the sentence, or in the tag attached to the first hearing, there may be no mention of it during the record of the cause, unless one or other of the proctors has a plea inserted which may give the reader a clue . It has accordingly not always been possible to say definitely what all the causes in a given sample from the court record were concerned with, as the beginnings of many of them fall within another court book, which has perhaps been lost, or for some other reason no note has been made of the matter at issue. It is usually possible to tell whether a cause was proceeded in out of mere office or out of promoted office, or between

two parties, where the parties concerned lived, whether the cause were one of appeal or not, and if it was, whether it was an appeal from the diocese or province of York. This explanation will, it is hoped, account for the number of ' unknown causes ' about which little can be said , but which are Nevertheless important in determining the volume of business in the courts.

Sometimes one, sometimes two or three samples have been taken from every court's books over a period of months in the case of the busier courts and of years in that of the less frequented ones. During this periods the new cause headings have been noted along with those of causes begun before the period under review began. From these lists figures have been compiled to throw some light on the number of causes tried by the courts, their nature, and the localities from which they came. It would be too much to claim for this method that it is completely accurate. Owing to the nature of the record it can hardly hope to be so. The scribes at York had very fluid ideas concerning the way in which causes should be entered in the court books. A cause of office might be noted in the same way as a cause between two parties or the office might proceed, not against one particular person, but against sometimes ten, sometimes twenty persons at once. This method has something to be said for it. If all the rectors of a particular deanery refused to pay pensions and synodals at the same time it was logical to proceed against them at the same time, and to enter the offenders' names in a block. If the office had proceeded against them, say in batches of five, the record would taken more time to write and delay might arise. When however these causes against a large number of persons are split up into a number of causes where the

office proceeds against one or two persons, the method becomes very confusing. (I) A similar procedure is used in causes of instance. Three causes where the same person proceeds against three other parties are written in as separate causes at first, and afterwards when the have reached a similar stage, for example when the plaintiff has made his personal reply in all three causes, they are recorded as if they were one cause. (2) These vagaries on the part of the scribe, to say nothing of his frequent confusion of names and times, a confusion abetted by the litigants, many of whom seem to vary the spelling of their names from time to time, add to the difficulties of statistical examination.

The first thing to remark concerning the Consistory Court is the great number of causes with which it dealt. During the period from 20th October 1585 to 13th January 1586 no less than 243 causes were either brought into the court or brought forward for new hearings. A correspondingly large number of hearings appear for every court day. This had the not surprising effect of shortening the court record very considerably. The amount of space devoted to each cause hearing is less than in any of the other courts. The record of the acts is cut to the minimum, abbreviations are widely used, and there are few pleadings inserted. This brevity of record becomes even more noticeable as the period goes on, so that the later books of the Consistory are very much abbreviated indeed. The amount of time which the court could give to each hearing was almost certainly much smaller than in the other courts.

(I) In the ' Audience ' Court Book 1579-84 F. 15 a large number of clerics are proceeded against for subtraction of subsidy in a group. These persons are then proceeded against in smaller groups. (2) Consistory Crt. Bk. 1586-7 Janet Boes c. Loggan and Loggan. See also F. 17 .

It has already been said that 243 causes were heard during the four months under review. In 162 of these no ' sors principalis ' can be discerned. A large number of them were probably begun before the period began, and their descriptive tag is accordingly not carried on.

The largest number of causes apart from these are the causes concerned with tithe, of which there are 32. Next in importance come defamation causes of which there are 19. Following these there are 19 causes of appeal. It is difficult to tell where most of these appeal causes came from, but one at least , the ' business of appeal on the part of Mr. George Pilkinton against John Wodd and Geoffrey Golden, churchwardens of the Church of Bolton, diocese of Chester and province of York,' (1) came from the province. There were 4 causes concerning testamentary matters, mostly causes of detention of legacies. It may be useful here to refer to the ' Index of the Original Documents of the Consistory Court of York, 1427- 1658.' (2) which states that the wills proved in the Consistory Court of York were those of all beneficed clergymen dying within the diocese of York except in places of peculiar and exempt jurisdiction, who were not possessed of ' bona notabilia,' (goods left in more dioceses than one.) all persons, clergy or laymen who died possessed of personal property solely within the peculiars during the six months prior to the Archbishop's visitation, when the peculiars' jurisdiction was inhibited, and laymen when there was an appeal from an inferior court. There were also 3 matrimonial causes, one cause of subtraction of salary, one cause of detention of a procuration, and one cause of subtraction of a mortuary.

Besides being a court of first instance for causes from York diocese,

(1) Consistory Crt. Bk. 1586-7 F. 7. (2) Y.A. S. 1928. ' Index of the Original Documents of the Consistory Court of York 1427-1658.'

many of which bear the label ' from York diocese,' (I) the Consistory seems to have been a court of first instance for litigants outside the diocese. For example Mr. John Pilkington, Archdeacon of Durham, brought a cause of detention of procurations against the Archdeacon of Brampeth. (2) This may have been due to an inhibition of Durham's jurisdiction for some reason or other however.

The Consistory was undoubtedly the busiest court at York and in that respect it resembled the Court of Arches in London. The extent to which it dominated jurisdiction at York can be seen, both from the court books and from the files of significavits from the diocese of York which were enrolled in Chancery. (3) By virtue of this very busyness however it lacks the interest of some of the other courts, as the record , as has been noticed above is reduced to the bare essentials in most cases.

THE EXCHEQUER COURT.

The Exchequer is one of the more interesting courts at York because its constitution seems to have been evolved wholly at York, with no imitation of the courts of the southern province. There is no equivalent for it either now or later in the courts of the Archbishop of Canterbury. It cannot be equated with the Prerogative Court of Canterbury, as there was a Prerogative Court in York as well as at London. Apart from this initial peculiarity the court is itself, a straightforward one.

The Exchequer Court was held by the Commissary of the Exchequer and Receiver General.

(I) e.g. Consistory Crt. Bk. I586-7 F. 82. Grene c. Weston. (2) Idem F. 87.
(3) P.R.O. C. 85 Files I90-I93 (described in last chapter of this thesis.)

His full style and title were as follows. ' The venerable man Mr. John Rokeby, Doctor of Laws, the Commissary and Receiver General of the most Reverend Father in Christ and Lord the Lord Edmund, by divine permission Archbishop of York, Primate of England and Metropolitan.' (I) Like other judges he is often described as ' sitting publicly.' (2) The Commissary was sometimes the Vicar General, as Rokeby was, but he need not be. Rokeby was succeeded as Commissary by Richard Percy, who does not seem to have held the office with any other at that time. (3)

The Commissary received a commission from the Archbishop ; like most commissions it seems to have been granted during his good pleasure, as was Rokeby's commission for example.

The Exchequer Court sat between the hours of nine or elwen in the morning and one to three, four, or five in the afternoon, as did most of the courts, the Consistory for example. The court usually met on a Friday. The meeting place of the court was usually the Exchequer at York, as is shown by the following heading.

' Fifteenth day of June in the Year of Our Lord I570 in the Exchequer at York before the venerable man John Rokebye, Doctor of Laws, Commissary and Receiver General of the Most Reverend Father in Christ and Lord the Lord Edmund by divine permission Archbishop of York and primate and Metropolitan between the hours of one and five in the afternoon of the same day, sitting publicly as a tribunal in the presence of me Edward Fawkys, notary public, actuary of the Exchequer at York.' (4)

(I)Excheq. Crt. Bk. I570-72 F. 3. Similarly the less important financial officers of the Archbishop were called receivers. William Brewster, the Pilgrim Father was bailiff and receiver of Scrooby manor. ' Saints and Strangers.' George F. Willison. (2) Idem F. I04.

(3) Reg. 30. F. 86. (4) Excheq. Crt. Bk. I570-2 F. 3.

Although sittings were occasionally held elsewhere, such as in the Bedderne (the dwelling house of the Vicars Choral) the Exchequer was situated in the Close, as can be seen from a reference in the Cambridge Precedent Book to the ' Exchequer of the most reverend father in Christ and Lord the lord Archbishop of York, primate of England ... situated within the Close of the Cathedral Church of York.' (I)

Besides the judge , who as has been said was the Commissary of the Exchequer, the court was often presided over by substitutes ; Robert Burlande, James Crosthwat and Edward Swayne are examples. (2)

The more or less permanent actuary or scribe of the court for a long time during this period is Edward Fawkes, the father of the famous Guy Fawkes. He seems to have been almost in the position of registrar, as on the death of Thomas Young the record describes how ' Mr. Edward Fawkes, notary public and actuary of the Exchequer of York handed over and delivered to them, the Dean and Chapter, then and there saving his real right the two keys of the Office of the Exchequer.' Richard Franklande, who is described in the same document as registrar of the Court of Audience or Chancery and of the Consistory had charge of the keys of these courts and it is reasonable to assume that Fawkes was fulfilling the registrar's duty for the Exchequer and had received an appointment as deputy registrar for a term of years or for life. (3)

The seal of the Exchequer is mentioned later in the same document. An example of the Commissary and Receiver's seal exists in the British Museum. It dates from Walter Jones' tenancy of the office in 1563. It is described

(I) Camb. Univ. Lib. M.S. Addit. 3II5. F 94. (2) Exchequer 1570-2 F 104, 3.
(3) Reg. 30 F. 41.

as ' Red, indistinct, the points broken off, About two and three eights by one and a half inches when perfect... Pointed oval : the Archbishop seated in a niche under a canopy, lifting up the right hand in benediction, in the left hand a crozier. In base under an arch an official kneeling in prayer between two shields of arms ; left see of York, right resembles that used in seal of Archbishop Lee.' The legend runs ' Sigillum Comiss. Recept. Scacij. Ebor.' (I) John Rokeby was asked in the assumption of jurisdiction of the Dean and Chapter mentioned above, to recover this seal, along with others from its former owner.

The Commissary of the Exchequer received his commission from the Archbishop. A typical commission, that made out by Grindal to John Rokeby, ran as follows.

' Commission to the Commissary of the Exchequer at York.

Edmund by divine permission Archbishop of York, Primate of England and Metropolitan to our beloved in Christ Mr. John Rokeby, Doctor of laws, canon residentiary in our Cathedral and Metropolitical Church of York. Greetings grace and blessing. We commit to your, in whose faithfulness, industry and prudence in affairs we greatly confiide, our powers and authority and full power in the Lord with any power of ecclesiastical and canonical coercion, and appoint, constitute, depute, and create you our Commissary and Receiver General by the presents at our good pleasure, so long as it lasts, to prove approve, and publish testaments and last wills of any of our subjects as much laymen as clerics without benefices dying and deceasing within our city and diocese of York, and if need be to make null, invalidate and annul these

(I) B. M. M. S. S. Room Catalogue of Seals Vol. I. 2342.

testaments and last wills.

To commit the administrations of all and singular goods, rights, and credits concerning these testaments and last wills and of any other persons whomsoever dying intestate to suitable persons according to what the law and the statutes of this realm of England published in this part demands and not otherwise nor in any other way.

To ask for, hear, and receive an account, computation and reckoning of and about these adminiistrations.

To dismiss from the office and finally acquit any executors and administrators of goods from making a further account, and to sequestrate the goods, rights, and credits of these testators or intestate persons, and often as need be, and under the act of sequestrating them, to take care of them and have them taken care of.

To hold general synods on the usual terms and days and preside in these synods with our power and authority and to publish our statutes and precepts whatsoever, and to admonish that they be observed under the penalties contained in them.

Also to create, make, and appoint the rural deans of the said city and diocese and substitute or depute one or more substitutes in your place and in your absence, and generally to do, exercise, and employ (occupandum) all and singular other things which pertain or have regard to the office of the Commissary and to the Commissary of our said Exchequer at York by right and custom or what ought of to belong or pertain and to do, exercise and expedite them even if they should be more than are expressed above, in the manner in which we would be able to were we personally present.

Given at London on the first of June in the year of Our Lord I570 and the first year of our translation.' (I)

A sample of the Exchequer Court Book for I570-72, taken from the court record which begins on 8th June I570 and ends on 8th June I57I shows that during that time II6 causes were brought into court or had previously been begun. Of these causes 84 were causes where the office of the judge had been promoted for the commission of the administration of the goods, rights and credits of some deceased person. Of these causes 77 of the administrations claimed are said to be those of the estates of persons who had died in York diocese, while a great many others were probably those of the estates of deceased persons who had died in York diocese. Two other administrations are mentioned as being of the estates of persons who had died in the jurisdiction of the Archbishop . They were probably travellers. One of them, Elizabeth Quernebye alias Goodknappe is described as ' deceased at the time of her death within the jurisdiction of the most Reverend man the Archbishop of York.' (2) The other, Robert Snawsell, is described as being ' of Grymsby, in the diocese of Lincoln...' at the time of his death within the jurisdiction of the most reverend Father .' (3)

Of these administrations 49 are definitely said to be of the estates of persons who had died intestate, but probably many more belonged to the estates of intestates.

(I) Arch. Reg. 30 F 86. (2)Excheq. Crt. Bk. I570-72. F I02.

(3) Excheq. Crt. Bk. I570-72. F. 50.

One of the administrations sued for was for the estate of a cleric, Henry Bowlton, who was apparently without benefice, as nothing is said of his having a living. (I) This bears out the statement that ' the wills... of the unbeneficed clergy were proved in the Exchequer Court.' (2)

Several of the administration causes were brought for the administration of a portion as well as for the ' goods, rights, and credits' of the deceased, and one was brought for the assignation of a tutor as well.

Sixteen causes were brought for the probate of a testament. Of these at least IO came from York diocese. One of them was brought for the exhibition of an inventory as well as for probate.

Ten other causes, of which at least 4 come from York diocese, are for the assignation of a tutor or curator, while three others are for the reception of an account.

One cause where the office of the judge is promoted for the reception of an account from two administrators of the goods of William Jenkinson of Wawme alias Waghen, well illustrates the division of causes at York, which was two fold, according to the locality from which the cause came, and according to its nature - though this last division was not very clearly thought out. If Willliam Jenkinson had left a will his administration would not have become the responsibility of the Exchequer Court, and his administrators would accordingly have been summoned before the Dean and Chapter Court. (3) This cause is later described as being ' for the giv-

(I) Excheq. Crt. Bk. I570-72. F. I07. (2) ' Index of original Documents .' Y.A.S. I928. (3) Excheq. Crt. Bk. I570-72 F. 6.

-ing in of an account.' (I) One of the other two causes is for the exhibition of an inventory and the other for the probate of a codicil.

THE PREROGATIVE COURT.

No court books for the Prerogative Court during this period seem to have survived. It is however, possible to gather some information about it from other sources.

It is important to realise that the York Prerogative was apparently modelled consciously on the Prerogative Court of Canterbury, in so far, at any rate that they both dealt with testaments concerned with ' bona notabilia.' Holdsworth says of the Canterbury Prerogative Court ' it took cognisance of the testamentary jurisdiction belonging to the archbishop. It originally sat in the Archbishop's palace, but it was moved about the time of the Reformation to Doctor's Commons,' it eventually dealt with ' most of the testamentary business of the country,' and ' whenever a man left bona notabilia in more than one diocese they'(the Archbishops of Canterbury)' claimed to oust the jurisdiction of the bishop.' (2) Conset is somewhat fuller as to the jurisdiction of the court.

' The style of this court is likewise wont to be, in the name and style of the most reverend , the Archbishops of Canterbury ; and all persons summoned to appear are likewise summoned in his name to appear before him , or the Keeper, Master or Commissary of his Prerogative Court of Canterbury.

To the judge of the Prerogative Court do belong all Probations ; and

(I) Exchequer Crt. Bk. 1570-72 F. 5. (2) W.S. Holdsworth. ' A history of English Law.' P. 602. Holdsworth describes the York Prerogative Court as being the counterpart of the Canterbury Prerogative - not completely correctly, as will be shown.

Approbations of Testaments, the power of granting administration of the goods of persons dying (intestate) within the Province of Canterbury ; to wit ; who have goods, rights, or credits moveable or immoveable out of the diocese wherein they lived or inhabited at the time of their death of which they were capacitated to dispose or have disposed ; If the said goods so out of the diocese extend but to the value of 5l. or upwards which said goods are called bona notabilia, by the style and custom of that court, which is in force to this day.' (It must be remarked here that a Conset, though a good, sound and clear writer seems to have employed a very poor printer (I) hence the apparent self contradictory passages where the passage mentions ' intestate ' persons , and later says they ' have disposed' of their goods.)

' In this Court are tryed all causes of instance for the proving and revoking of wills, whether originally (in that instance) exhibited, or formerly proved in common form of law ; and for the granting and revoking of administrations in the aforesaid cases, whether the judge was privy to the circumstances at the time of granting the administration, or whether it were surreptitiously obtained, the truth being app suppresst, and falsity suggested by the party desiring the administration, contrary to the laws and the statute, or if it afterwards appear there was a will proved or administration granted by any other judge, whereas the same ought to have been done by the judge of the Prerogative Court.' (2)

It is only necessary to add that the enforcement of the claim of bona notabilia was in force in York, and had been for some time, (3) before 1604

(I) My copy is the second edition (London 1700.) (2) Conset Part I. Chap. III. Sect. I. (3) ' Approbation of a testament before the Archbishop of Canterbury by reason of the prerogative.' Bodleian. Bucks. Archd. M.S. d. 4. F. 37.

when they were officially recognised by the Canons of that year, so far as can be judged from the ' Approbation ' referred to on the last page, which was probably inserted in the precedent book by its author in order to provide a model for similar approbations issuing from the York Prerogative.

The Prerogative Court at York was held by the ' Custodian and Commissary of the Prerogative of the metropolitical church of the Blessed Peter of York,' (I) a style similar to that of the holder of the Canterbury court. In the absence of court books it is difficult to say much about the judges of the court. Richard Percy, who was given a commission as holder of the Prerogative, was in addition the Archbishop's Vicar General.

No seals of the court seem to have survived at York, but there is a lead cast for a mould of the seal of the Keeper of the Prerogative Court in the British Museum. At the date of the seal, which is described as late sixteenth century, the office of the Exchequer was combined with that of the Commissary of the Exchequer. Its description in the catalogue is ' a pointed oval : St. Peter seated on a throne, holding keys and a book. In base a shield of arms: a fesse embattled counterbattled between three lions heads erased.' (2)

No mention of the holder of the Prerogative Court or the court itself seems to have been made in the assumption of Archiepiscopal jurisdiction by the Dean and Chapter in 1568, and, in fact, references to the Prerogative during this period are scanty.

Its nature and jurisdiction are shown by the commission given to Richard Percy by Edwin Sandes. It began with the preamble.

(I) Arch. Reg. 31/56. (2) B.M. M.S.S. Room Seal Catalogue No. 2364.

' Whereas the examination, probate, and publishing of the testaments and last wills of all and singular persons who had, while alive and had, at the time of their death ' bona notabilia' rights, credits and chattels in other dioceses or jurisdictions of our province of York and of the premisses ' (i.e. the examination of the premisses .) ' concerning as much the said testaments and testators as any intestate persons whomsoever who similarly have goods, rights credits and chattels, and the administration account, reckoning and computation of the premisses (when an examination has been made) and the final acquittance are notoriously known to belong solely and wholly to us and our successors, as much by the common law of this realm of England as by the Prerogative of our cathedral and metropolitical church of the Blessed Peter of York, and not to any other inferior judge....' (I)

The commission goes on to appoint Percy Keeper and Commissary of the Prerogative. He is given power : to take cognisance of and proceed in all and singular causes, complaints and businesses, whether moved out of mere, mixed, or promoted office, or at the instance of a party or parties which devolved on the Prerogative Court and its Keeper by right, statute or custom.

He is to hear, discuss, examine, decide, and terminate these causes with things incidental to them, dependent on them, and connected with them. He is to admit and receive witnesses, letters and instruments, and any other kinds of proof to be produced before him or to be called for by him on the authority of the present commission and if need be he is to reject

(I) Arch. Reg. 31. F. 56.

and refuse them. He is to examine witnesses, or have them examined, to give or promulgate sentences both definitive and interlocutory, in words or in writing , and he is to execute them.

He is to approve and publish the testaments or last wills of all persons dying in the way described, that is having ' bona notabilia,' or otherwise to quash or annull them.

He is to commit in due form of law the administrations of the goods, rights and credits and chattels which in any way concern the deceased persons to the person or persons to whom, by the law and statutes of this realm of England, they ought to be committed.

He is to ask for, hear, receive, approve and admit an account, computation or reckoning about the testaments, last wills, and administrations, or if need be refuse and reject them.

He is to absolve and dismiss persons who have given accounts in this respect and to decree for, and hand over to them acquittances, dismissals and final releases.

He is to substitute one or several substitutes in his place and in his absence and to recall this substitute or these substitutes and is to do all and singular other necessary things which fall under the competence of, or belong to the Archbishop and the Keeper or Commissary of the Prerogative, by law, custom, statute, or other means, even if the doing of these things demands a more special (i.e. wider) mandate than has been given in the commission. (I)

(I) Arch. Reg.31 F. 56. Dated 3rd May 1587.

Apparently there were no registrars of the court hitherto , and provision is made for setting up a registry in the following words -

...' having joined to yourself as your scribe of the acts in the premisses any sufficient notary public to be chosen by you to record and register faithfully and completely the acts done by you by virtue of the presents and afterwards by others under the title ' Registrar of the Prerogative Court of the Archbishop of York.' (I)

The fact that the Prerogative Court had hitherto had no registrar would seem to indicate that it was of fairly recent development. On the other hand it may simply indicate that the business of the court was so extensive that it was found necessary for the court to have its own registrar, instead of sharing one.

THE COURT OF AUDIENCE OR CHANCERY.

Some of the confusion which has arisen in the past regarding the court of Audience or Chancery may be attributed to Holdsworth's statement ' the provincial courts of the Archbishop of York were the Chancery Court, the Prerogative court, and the court of Audience of the Archbishop of Canterbury.'(2)

In making this statement he refers his reader to page 31 of the Ecclesiastical Courts Commission Report of 1883. In actual fact the findings of the Commissioners was expressed in a much more guarded manner. (3) They say, quite correctly -

' The provincial courts... of York were the Prerogative court and the Chancery Court.'

(I) Arch. Reg. 31 F. 56. (2) Holdsworth. ' A History of English Law.' Vol. I. p. 602. (3) A more correct reference would be ' Ecclesiastical Courts Commission Report, 1883 ; Historical Appendix (I) page 31.

A little further down the Report says.

' The provincial courts of the province,...known as the Prerogative Court and the Chancery Court seem to have answered to the general description given above of the prerogative court and the court of arches for the province of Canterbury, but the title of auditor of the Chancery Court, which is given to the Official Principal, seems to refer to a state of things in which the consistorial and auditorial jurisdiction were distinct.' (I)

What then was this ' Audience Court ' of the Archbishop of York which Holdsworth refers to ? Johnson says as follows concerning it.

' The Archbishop of Canterbury had formerly his Court of Audience, in which at first were despatched all such matters, whether of voluntary or contentious jurisdiction, as the archbishop thought fit to reserve for his own hearing... But now the great office of official principal of the Archbishop, dean, or judge of the peculiars and official of the audience are and have been for a long time past united in one person under the general name of the Dean of the Arches, who keepeth his court in Doctor's commons.'(2) ..... The Archbishop of York hath in like manner his court of audience.' (3)

Now if the Archbishop of York had his Court of Audience ' in like manner,' he must have had it as the Archbishop of Canterbury had his, that is he had it at one period, but it had since become obsolete, and had been obsolete for a time. This certainly seems to be the meaning taken out of the passage by Phillimore, who quotes it, for he says .

' The existing ecclesiastical courts are ... In the province of York

(I) Eccles. Courts Commission Report 1883. Historical Appendix (I) P. 31.
(2) Johnson P. 255. Quoted in Phillimore's ' Ecclesiastical Law.' Vol. II. P. 1204. (3) Idem.

the Supreme Court, called the Chancery Court, the Consistory Court, and the Court of Audience. In these courts of Audience the primates once exercised a considerable part of their jurisdiction. They are now I think obsolete or at least only used on the rare occurrence of the trial of a bishop.' (I)

It is worth noting that Zouch, who wrote in I636, says that the Canterbury Audience had equal jurisdiction with the Arches, and was held in St. Paul's in London. It was inferior in antiquity and dignity to the Arches.' (2) Oughton remarks that no Court of Audience had been held for a very long time. (3) It seems certain then that the Canterbury Audience continued into Stuart times, but thereafter became obsolescent, if not obsolete. One of the Puritan publicists , the authour of the paper entitled ' Touching the Court of Audience ,' (4) affirms that the Court of Audience rests solely on the authority of the Pope's legatine commission and that the Archbishop's jurisdiction in this court was not confirmed by Act of Parliament, as his other jurisdictions were. This is interesting, as the ecclesiastical courts were very much under criticism at the time, and would therefore try to escape criticism as far as possible. It may be then, that the Audience was made less use of after this attack upon it. The writer's next criticism is an even more telling one. Why he asks does the Archbishop make use of the Audience when he has in the Court of Arches a court ' for all causes and complaints apperteyning to a metropolitan? ' In other words there was necessity for

(I) Phillimore. Vol. II. P. I20I. (2) Zouch Pars III s. 3. P. I72. Quoted by Phillimore. Vol. II. P. I20I. (4) B. M. M. S. Room. Cleo. F. I. 88.

the Court of Arches but none for the Court of Audience in the southern province. As it was both criticised and unnecessary and as the ecclesiastical officials were already hard put to it to defend what may be considered their legitimate jurisdiction , the Audience might be expected to recede further into the background as this period ends.

The same oblivion which fell on the Canterbury Audience seems to have already fallen on the York Audience by the time this period begins, and probably for fairly similar reasons.

It can be said quite definitely that during the years I575 to I595, and almost certainly from I570 to I574 and from I595 to I599 outside which time the court books seem to be missing, the Audience Court, whatever it may have been and the Chancery Court , as it was afterwards to be known were merged into one court called ' the Court of Audience or Chancery.' It is important to notice an analogy here, the Court of Audience at Canterbury was known in Elizabethan times as ' the Courte of Audience or the Chauncellor's Courte,' (I) implying that at Canterbury as at York the Court of Audience was considered to be equivalent to the Chancellor's or Chancery court.

The identity of this court is indicated by the following substitution.

' Tousday the eigth day of August , Year of Our Lord I58I in the hall of Langetoft prebendal house, situated in the Close of the Cathedral Church of York....Mr. Robert Lougher, Doctor of Laws, Vicar General and Official Principal of the most reverend Father in Christ and Lord the

(I) B. M. M. S. S. Cotton. Julius F. 6. 220.

Lord Edwin, ... Archbishop of York... deputed, surrogated, and put in his place his beloved in Christ Masters William Palmer, cleric, Master of Arts Chancellor of the Cathedral and metropolitical church of York aforesaid, George Slater, S. T. B. canon of the same church and residentiary and prebendary of Barnebie in it, and Anthony Iveson, cleric, succentor of the vicars choral of the said cathedral church of York, jointly and severally and either of them solely by himself, so that there should not be a better condition of occupation nor a worse one subsequently, but what one of them began by himself, any of them might freely prosecute, mediate and finish , * to take cognisance of and duly proceed in all and singular causes, suits, complaints and businesses in this court of Audience or Chancery , moved or to be moved, devolved upon or to be devolved upon, specially reserving and excepting to himself the cognisance, examination, and process in any cause or business in this Court of Audience or Chancery.' (I)

There would be less difficulty about the identity of the court if it were not for the fact that the court books of the Audience or Chancery for Elizabeth's reign have been catalogued as if they belonged to two separate courts, the so called ' Audience Court ' and the'Chancery Court.' The ' Chancery ' label would be quite acceptable if it were applied to all the court books for it was by this name that the Court of Audience or Chancery was eventually to be called. The court books of this court then, have been split up and classified under ' Audience ' or ' Chancery' labels as follows.

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* i.e. hear the middle acts of and finish. (I) ' Audience ' Crt. Bk. I579-84. (AB 24.)

'CHANCERY' COURT BOOKS.

'AUDIENCE ' COURT BOOKS.

I570

I57I

I572

I573

I574

I575

I576

I577

I578

I579

I579

I580

I58I

I582

I583

I584

I585

I586

I587

I588

I589

I590

I59I

I592

'CHANCERY' COURT BOOKS.	'AUDIENCE' COURT BOOKS.
I593	
I594	
I595.	

It was this remarkable symmetry , or rather dovetailing, in the years covered by the act books of what were supposed to be two different courts that first caught the present writer's attention (each group of figures represents a court book , with the number of years it covers.) It looks too good to be true, and in fact it is. All these books are from the same court, and have simply been split up in cataloguing. After I595 the alternative method of cataloguing has apparently been abandoned, as the next court book for the Audience or Chancery Court is labelled ' Chancery.' *

There can be no doubt that all these books belong to the same court, as the books themselves form a sequence, causes at the end of one book being continued in another, which could not happen if they were the court books of two different courts.

For instance at the end of the ' Chancery ' Court Book for I575-79

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* In fairness to the reverend gentleman who catalogued the court books it must be pointed out that it is often difficult to tell which court a book belonged to, as he himself admitted in a lecture to the York summer school. At the same time it must be stated here that he imagined that there were definitely two courts, and that the ' blanks ' in each of the two supposed series could be accounted for by the fact that the court books in question had been lost.

there are five causes which are continued into the beginning of the 'Audience' Court Book I579-84 (I) They are ; Leaver c. Garfourth, mentioned on folio 203 of AB 27 and noted on folio 2 of AB 24, the office against Thwaites, mentioned in AB 27 Folio 209 and continued in AB 24 folio 9, a business of appeal for Awde, noted in AB 27 folio 209, and continued in AB 24 folio 4, the cause of Maddeson noted in AB 27 folio 2I0 and continued in AB 24 folio 5, and the business of inquisition about the validity of marriage between John Wilkinson and Alice Wilkinson, noted in AB 27 folio 2I9 and continued in AB 24 folio I.

Similarly AB 24, the ' Audience ' Court Book I579-84 continues into AB 52, the ' Chancery ' Court Book I585-I595. Here the continuation is even more apparent, for the last entry in the ' Audience ' Court book begins -

' The business of a double querele on the part of Henry Evans, cleric S.T. B. against the most reverend Father the Lord John Bishop of Carlisle for the admission of the said Henry to the rectory of Graystocke in the diocese of Carlisle and his institution in it, being vacant, as is said, by the death of the last incumbent there.' (2)

This entry is copied out in full on the first page of the ' Chancery ' Court Book (3) Similarly the causes of Jenkinson c. Wood, Haworthe c. Olderoyd and Eaton c. Leache and Pennante, which are noted at the end of AB 24, are carried on to AB 52. (4)

(I) AB 27 continues into AB 24. (2) AB 24 F. 22I. (3) AB 52 F 2. (4)Jenkinson c. Wood, AB 24 F 3II, is continued into AB 52 F 4, Haworthe c. Olderoyd AB 24 F 3II is continued in AB 52 F. 4. while Eaton c. Leake and Pennante, AB 24 F 3II is continued on the same page of AB 52. (

It would be possible to reduplicate references to the Court as being that of ' Audience or Chancery.' For instance Mr. Robert Lougher, Vicar General of Edwin Sandes, deputed and surrogated William Palmer the Chancellor, Robert Burlande the succentor, and Thomas Twenge, advocate of the Consistory, commissioning them to ' proceed and take cognisance in all and singular causes and businesses in this court of Audience or Chancery.' (I) At the same time the court is quite frequently referred to as either Audience or Chancery. For instance in the ' Chancery ' Court Book I575-79 there is a reference to ' this court of audience,' (2) while in the commission which conferred the authority under which the judge of the court sat it is usually referred to simply as ' the Audience.' (3) The fact that the two jurisdictions of Audience and Chancery (if they had at any time separate existence) were merged did not prevent these references to ' audience ' or ' chancery ' separately on the part of the registrars or other persons. For instance in the ' Chancery' court book of I575-79 the letters commissional to Robert Lougher refer to the ' audience ' while his proceedings under them are referred to as ' chancery' proceedings. (4)

A final argument for the existence of the Audience or Chancery Court as it has been described may be put forward. An Elizabethan writer on the ecclesiastical courts, of earlier date than any of the authorities quoted above says ' The other Archbishop (i.e. York) and eche other Bishope also hathe in his owne dioces the Court of his Chauncelor and the court of his Archdeacon or his officiall.' (5) In other words he had heard of a Chancery Court of York, but not of a Court of Audience. There seems little

(I) AB 27 ' Chancery ' I575-79 F 200. (2) AB 27 F 2I0. (3) AB 27. (4) AB 27 F 86. (5) B. M. M. S.S. Room Julius F. 6. F 220.

doubt that the Court of Audience or Chancery speedily became known as the Chancery Court, indeed it would seem that as the court books for this period go on the court is more frequently referred to as ' chancery ' than as 'audience.' Whatever the Court of Audience may have been there could be no functional necessity for it at York at this time, as the Audience or Chancery, or Chancery, as it may be called towards the close of the period was not a remarkably busy court, it did not have more causes than it could comfortably try. In an age when the whole fabric of the courts was under constant attack , when Grindal wished to abolish even the Court of Faculties, and Parker prayed that those who attacked his courts would take their jurisdiction upon themselves an unnecessary court would not have been tolerated.(I)

The judge in the Court of Audience or Chancery was, as has been noticed already the Vicar General of the Archbishop. Here is an example of the judge of the Court of Audience or Chancery receiving letters commissional from the Archbishop.

' Teusday, viz. the twelth day of May in the Year of Our Lord I577 in a certain room within the usual house of residence of the venerable woman Jane Young, notoriously situated near to the cathedral church of the Blessed Peter at York, there appeared personally a certain Edward Marten, literate person, and presented and exhibited to the venerable man Mr. Robert Lougher, being present then and there, honourable letters comm-

(I) Grindal referred to the Court of Faculties as ' that stinking petty ditch.' (Strype's ' Grindal.') Parkery in a letter date Ist April I570 says ' I have more grief thereby than gain' (from one of his courts) and I would it were wholly suppressed... or else committed to some other that could do it with better discretion as I am sure there are many, for so divers profess in their open sermons.' Parker's ' Correspondance ' Let. CCLXXVI.

-issional and deputational of the most reverend Father in Christ and Lord the Lord Edwin by divine permission Archbishop of York primate of England and metropolitan of the deputation and constitution of the same Mr. Robert Lougher as Vicar General and Official Principal and auditor of the audience of causes and businesses of the said most Reverend Father, directed to the same venerable man Mr. Robert Lougher, sealed with the pendant Archiepiscopal seal of the most reverend father in red wax and bearing date the twenty second day of the month of May. Mr. Robert Lougher received these letters with due reverence and honour and handed them to me John Martyall notary public, to read. When they had been read the same venerable man Mr. Robert Lougher, because of his honour for the order of the most reverend Lord, assumed, undertook and accepted the commission and deputation of these letters commissional and pronounced and decreed that it be proceeded for his jurisdiction in this part, and according to the force, form, and effect of these letters.' (I)

These letters commissional which are couched in the usual terms of commissions to hold the Audience or Chancery, were entered in the court book. The authority by which the Auditor of the Court held his court was included in the wider powers of the vicar general in the following clause. The Auditor was given power to ' take cognisance of, proceed in and terminate without delay any causes and ecclesiastical businesses whatsoever at the instance of any party or out of mere, mixed, or promoted office, moved or to be moved in our Audience with any things emerging out of them

(I) AB 27 F 43.

annexed to them and connected with them.' (I)

The style of the judge has already been given. The seal which the court used was ' the seal of the Office of Vicar General in Spirituals of the Archbishop of York which was used as much in the Court of Audience or Chancery of the Archbishop as in the Consistory Court.' (2) It has been already described in the account of the Consistory Court.

The Vicar General at York had many duties to attend to other than those concerning the Audience or Chancery Court, and substitutions were frequent. A typical one occurs when Robert Lougher, being ' before the door of the prebendal house of Langetoft ' deputed, surrogated, and put in his place ' his beloved in Christ masters William Palmer M.A. .. Robert Burlande, cleric, succentor of the vicars choral of the same church and Thomas Twenge B. A. advocate of the Fair Court of Consistory,' to take cognisance of the causes moved in the court ' with any power of canonical and ecclesiastical coercion.' (3) In this instance the fine weather seems to have driven the court out of doors. Meetings in the prebendal houses which lined the Close were not unusual, for instance it met in Wistow Prebendal House in the Close. (4) It also met ' in the great room ' in Sandes' manor house near the College of the Virgin Mary at Southwell(5) in the Castle of Cawood (6) and in the consistorial place, that room of all work. The usual day for a court meeting was Friday, but meetings were also held on Mondays and occasionally on Thursdays.

(I) AB 27 F 200 43. (2) Arch. Reg. 30 F. 41 ' Assumpcio Jurisdictionis Archiepiscopalis.' (3) AB 27 F 200 (4) AB 52 F 38. (5) AB 27 F 220. (6) ' Chancery ' Crt. Bk. I574-79. F 28.

The hours of the court varied. It met between the canonical hours of nine and eleven (I) but it might hold earlier sittings, between six and eight in the morning for example (2) and also afternoon sittings between three and six in the afternoon. (3)

The Vicar General of the Archbishop and the Auditor of the Court of Audience or Chancery were one and the same person, and it is therefore reasonable to assume that the Auditor employed his powers as Vicar General in the court. On this assumption a short abstract of the Vicar General's powers, as shown in his commission is given here. The paragraphs have been numbered for convenience of reference .

John Rokeby's commission gave him powers to -

I. Receive and have received a due oath of obedience from all and singular ecclesiastical persons within the city and diocese of York who are bound by law or custom to swear and promise obedience to the Archbishop.

2. To enquire as often and when it should seem expedient to do so of and about acts of heretical depravity and the crime or crimes of heresy and other crimes, and about the excesses of clergy and laymen.

3. To correct and punish these crimes, transgressions and excesses and to inflict and impose imprisonment if need be, and generally to inflict other punishments which the ecclesiastical law and statutes of this realm of England allow or permit.

4. To take cognisance of and proceed in any causes, complaints and eccl-

(I) 'Chancery ' 1574-79 F 28, 53. (2) Idem F 8. (3) Idem F 13.

-esiastical businesses moved or to be moved in the Audience at the personal instance of anyone or out of mere, mixed, or promoted office, with any of the things emerging out of them, incidental to them, depending on them, annexed to them or connected with them, and to finish and terminate them.

5. To set down from remove and deprive in form of law any ecclesiastical persons whomsoever, from any office or offices, dignity and ecclesiastical benefice whatsoever, if their crimes, excesses, and misdeeds demand it.

6. To confirm elections to cathedral churches, hoppitals, hospices (domibus) and colleges and any other religious positions (piis locis) whatsoever, and to confirm the persons elected by the Archbishop's authority and to institute and install them with all their rights and appurtenances and order them to be instituted and inducted into real and corporal possession.

7. To invalidate and quash and annull elections made and celebrated in an uncanonical fashion.

8.To admit suitable persons to any ecclesiastical benefice in the city and diocese of York which is vacant in any way and to order that those legitimately presented to it be admitted and inducted with their rights .

9. To enquire without fail in due fashion and have enquiry made about the right of patronage in any churches.

IO. To give a licence to treat about and conclude on and about the assig-

-nation of a canonical pension.

II. To admit the renunciations or resignations of any ecclesiastical benefices, with the pension reserved or to refuse them if need be.

I2. To take order for the assignment of a portion, and its due payment to those persons resigning their benefices to be paid annually to their lives' end or at the time of the fruits and income of the said benefices.

I3. To absolve at any terms or places.

I4. To supply the defects and negligence of the prelates and priors within the city, diocese, and province of York as often and when it shall be necessary. *

I5. To sequestrate the fruits and income of vacant churches in cases where the law permits and to collect and preserve these fruits and income, committing and ordering that they be collected and preserved.

I6. To dispense with the aforesaid clergy in the cases permitted to the Archbishop by law.

I7. To approve and publish the testaments of any beneficed clerics whomsoever dying within the city and diocese aforesaid, and to pronounce and declare for their value.

I8. To commit administration of all and singular goods concerning these testaments and testators and also concerning those dying intestate in any

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+ In its reference to ' priors' the commission bears the stamp of common form.

way, * to the person or persons to whom by law or custom administration ought to be committed.

I9. To sequestrate and order that it be sequestrated.

20. To hear and receive an account, reckoning up or computation of and about the goods administered in this part and to dismiss finally and discharge and acquit from the office (saving anyone's right) if it is well and faithfully accounted.

2I. To ask for and receive any clerics who are convicted upon any crimes before the lay judges within the said diocese and city who by law and the custom of this realm of England enjoy benefit of clergy , as the manner is, by himself or by a sufficient deputy and to commit them to some person or persons who shall seem expedient, and to deliver them and have them delivered to our prisons.(i.e. The Archiepiscopal prison , Peter Prison.)

22.To have those clerics admitted to make their purgation.

23. To duly execute the Queen's briefs directed to the Archbishop and to make reformation which is necessary and to certify the briefs.

24. To have general orders celebrated by our Reverend brother Richard Bishop suffragan of Nottingham, or if he is prevented, by any other Catholic Bishop within the city and diocese aforesaid and to examine those to be promoted to minor or sacred orders and enquire about their manners and doctrine.

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* i.e. beneficed clergy dying intestate.

25. Also to deliver and concede letters dismissorial to our subjects who wish to be promoted to sacred orders.

26. And generally to do, exercise, and expedite all and singular other things which are known to pertain to the office of Vicar General and Auditor of causes and businesses by law or custom (saving and especially reserved to us the collation and presentation to the benefices which belong to us and our Cathedral and metropolitical church of York. (I)

Many of the powers conferred by this commission were exercised out of the court. For instance the court had nothing to do with the reception of clerks convict, which was deputed (so far as peculiars were concerned at any rate) to the holders of the peculiar jurisdictions. (2) The execution of royal briefs or writs is recorded in the Archiepiscopal Act Books as well as in the Audience or Chancery Court Books. Here as elsewhere it is as well not to be too definite, royal writs may have been executed in the Audience or Chancery and a note of their execution entered in the Act Books or Registers for convenience in finding a record of them.(3)

It is necessary to make something of a digression here and take into the scope of this chapter records which do not form part of the ordinary sequence of the Audience or Chancery court books. These are the ' Institution Books ' so called because they deal largely with institutions, and bound under the name of Act Books in the diocesan registry. (4)

(I) Reg. Arch. 30 F. 85. (2) Sandes Act Bk. F 68. William Duxfield is given a commission to receive clerks convict in Hexham and Hexhamshire. (3) In the case of Witton, which was begun because of a royal writ, the record is in Sandes Act. Bk. F 93 while a royal order to sequestrate the incomes of several clerics is recorded in AB 27 F 204. (4) e.g. Act Bk. I553-I57I.

Besides containing a record of the institution of clerics to benefices and offices (I) and being in some ways an extension of the registers, these act books contain what are undoubtedly the records of a court. A clear reference to this court is given inth the following passage-

' Item the said Mr. Lindsey consenteth that the premisses remain apud acta huius curie in such form as he is contented to be deprived if he breaketh the condityons above written.' (2)

There does not seem to be any mention in the records of the name of the court concerned , it might almost seem, from the business done, to be an abortive 'Court of Faculties ' at York, but more probably these books contain a record of extraordinary sittings of the Court of Audience or Chancery. The purpose of these meetings outside the usual sittings of the court and this separate record may have been to provide a convenient record of institutions and deprivations with which many of the causes are concerned. The nature of this extension of the Auditor's court is much more apparent in some parts of the Act Books than others, but the court, such as it was, met often enough to try causes of quite considerable length, such as the cause of deprivation promoted by Christopher Malton, Archdeacon of Cleveland, against Robert Lacy, which went into nineteen hearings. (3) Meetings were infrequent, on occasion, the notaries public attending vary considerably, and there are other signs that the court was of an occasional nature and had not been confirmed by anything like a settled constitution. It was in fact, merely an occasional extension of the Aud-

(I) e.g. The Act Bk. of I555- I57I contains the ' Liber institutionis incipiens in anno I568 et desinens in anno I57I.' (2) Act Book I553-I57I F. 93. (3) Idem F. I0.

- ience or Chancery Court.

There were, however a fair number of sittings. During July 1568 the court held eight sittings, during November six, during December three, during January five, during February three, during March five, during April four, during May six, during June five, and during July of the next year one. (1)

The style of this extension of Audience or Chancery is shown in the following court heading.

' Monday, that is the twelth day of June in the Year of Our Lord 1570 within the cathedral and metropolitical church of York in the Consistory place there between the hours of one and four in the afternoon of the same day, before the venerable and eminent man Mr. John Pokeby, doctor of laws, Vicar General in Spirituals and Official Principal of the most reverend father in Christ and lord the lord Edmund by divine permission Archbishop of York, Primate of England and Metropolitan, lawfully deputed, sitting judicially as a tribunal etc. in the presence of me, William Pothergill notary public scribe of his acts legitimately deputed and joined to him.' (2)

The court met in various places : in the consistorial place (3) in a certain ground floor (bassa) parlour within the usual house of residence of the most Reverend Father Lord Richard Bishop of the see of Nottingham ' vulgarly called Fenton House,' (4) in a room in Bishowe House, at that time the home of Anthony Blaicke S.T. B and canon residentiary (5) and elsewhere. Acts done at Battersea are recorded in the court book though

(1) Act Book 1553- 1571 F. 93. (2) Idem F. 69. (3) Idem F. 1, 2, 3. (4) Idem F. 6. (5) Idem F. 9. (6) Idem F. 15, 30. (7) Idem F. 30. (8) Idem F. 30.

it is unlikely that the court ever travelled there. (I) Meetings were also held in Rokeby's home Ulleskelfe House, and in the Deanery. (2)

The usual hours of the court were from nine to eleven in the forenoon , and Friday was the most common day for it to be held, though meetings for other days are recorded.

The usual judge seems to have been the Vicar General, as in the heading given above, butt the Archbishop occasionally presided (3) as did the Dean. (4) A deputation in the court record shows that the Vicar General was looked on as the ordinary president, and is another indication that the Act Books court is an extension of the Court of Audience or Chancery. The deputation records that ' John Rokebye Doctor of Laws, Vicar General and Official Principal legitimately deputed of the most Reverend Father in Christ and Lord the Lord Edmund by divine permission Archbishop of York and primate of England and metropolitan, being personally present asserted that he intended to ride the next day to the town of Haxbye and there perform and note certain matters of [illegible] weight so that he could not personally exercise the position of the Vicar General in Spirituals and Official Principal in the said consistory because of the aforesaid cause .'

The word ' consistory ' in this passage is probably used with the meaning of ' ecclesiastical tribunal ' rather than in reference to the Consistory Court. Rokeby's assertion that he could not perform the duties of Vicar General and Official Principal implies that his pres-

(I) Act Book I553- I57I Fs. I9, 20. (2) Idem F. 95. and 30. (3) Idem F. 85. (4) Idem F 9.

of - idency of the extension court involved the use of his powers as Vicar General and Official Principal.

The Archbishop attended the court very infrequently, during June I570 and June I57I he attended only three out of fifty three meetings (I) at the same time it would seem that he attended sufficiently often to discourage the idea that the court only met during his absences from York. During the vacancy of the see the court was held by the ' custos spiritualitas!8(2)

The practice of the court was diverse and some of the acts done in it would normally seem to be recorded in the registers, this does not of course apply to disputed causes which go through a number of hearings, these acts then had better be noted , with the proviso that the I553-I57I Act Book may have served as an extra register.

The acts done in the court illustrate many of the aspects of the Vicar General's jurisdiction, among which was the celebration of general orders. These were celebrated by Grindal in the chapel of Cawood castle on 2Ist December I57I and various deacons and priests were ordained. (3) Special orders were also celebrated by Richard Bishop of Carlisle and were recorded in the Act Book. (4)

An interesting feature of the court's jurisdiction was the granting of tolerations or faculties to readers to read in parish churches, indicating how badly provided for the Yorkshire parishes were .(5) The readers were usually licensed for a year. Their injunctions , the instructions given to them when they received their tolerations, make very interesting reading. (6)

(I) Act Book I553- I57I. (2) Idem. (3) Idem F. I73. (4) Idem F 86. (5) Idem F 56 is an example. (6) Idem F 55.

The Act Book also records the issue of licences to perform marriages (I) and orders for sequestration are noted as having issued, as are letters dismissorial to persons who wish to take sacred orders (2) The sending out of licenses to preach is also recorded.

Various appointments to livings and offices are recorded in the Act Book (3) while in October I563 Archbishop Thomas Young gave a commission to Matthew Jones and Thomas Laken to admit and institute any clerics to any dignities benefices or ecclesiastical promotions within the diocese of York (4)

Most of these activities can be found recorded in the Archiepiscopal registers and are not peculiar to the institutions books, many of them are also recorded in the ' ordinary ' Audience or Chancery court books.

Besides entries of the sort mentioned above there are a number of causes brought in due form. These seem to be mostly for admission and institution, resignation, deprivation and inquisition into the right to present. In the deputation of John Rokeby mentioned above, for instance (5) Rokeby specially reserved to himself the right to take cognisance of ' a certain inquisition or business of inquisition on and about the right of patronage of the vacant rectory of the parish church of Mydleton on the Wold.' Some of the causes for deprivation were contested at great length. (6)

It is now time to return to an examination of the practice of the

(I) Act Book I553-I57I F 32. (2) See F 32 for sequestration order and F 37 for letters dismissorial. (3) Act Bk. I553-7I f 36 for appointment of Chancellor. (4) Idem Lib 3. F 4. (5) Page 75, Act Bk. I553-I57I F I06. (6) Idem F 66, I4.

court as shown in the ' ordinary ' court books of the Audience or Chancery. As this court is so important for an understanding of the Archiepiscopal jurisdiction at York samples have been taken from four separate court books.

The first book is that which records the work of the court during the years 1570-1574. It contains 236 folios all of which have been included in this examination.

During the period covered by the court book 138 causes were either being tried before the court or were brought into court. Of these 63 give no clue as to the ' sors principalis ' or matter at issue but 18 of them were brought against tithe farmers, occupiers of tithes, or sequestrators of livings. Twenty one causes were brought for admission and institution to a benefice , 9 were causes brought to make a custodian of a sequestration show an account of the fruits of the sequestration, 7 were causes of correction for fornication or adultery, 4 were appeal causes, 4 were causes brought for administration, 4 were for the probate of a testament, 4 were for the detention of the subsidy paid to the Archbishop by his clerics, 3 were brought against non residents, 3 were inquisitions into the right of patronage of some benefice, 2 were testamentary causes brought against the executors of a testament, while 2 were causes brought against administrators. There was 1 matrimonial cause, 1 querele of nullity, 1 tithe cause where the office proceeded against an offender, 1 cause of detention of pensions and synodals (payments demanded by the Archbishop when

he made a visitation, and sometimes asked when no visitation took place but a visitation was due) I purgation, I cause for the exhibition of an inventory, I toleration, I double querele, I cause against an administrator, I inquisition into the right of jurisdiction, I admission of a resignation, I cause of correction for unclerical behaviour, and I violation of a sequestration.

The second ' sample ' is taken from the Audience or Chancery court book for 1575-1579 from folio II to 135.* During the time covered by these folios there were 84 causes either before the court or brought in after the period begins. Of these 32 were for some unknown cause, 22 were causes of correction for adultery, of which 6 are mentioned as having been brought on suspicion, 12 are brought because of the subtraction of pension, II are brought for the institution and admission of a cleric, 3 are inquisitions into the right of patronage, I is a cause of correction for incest, I is for subtraction of tithe, I is for deprivation, and I is brought because of wrongful administration of communion.

The third sample is from the Audience or Chancery court book for 1579-84, from folio 6 to 153 (I) During this time there were 82 causes. 40 of these were for some unknown cause, II were brought against the subtracters of pensions and synodals, 8 were appeals, 8 were fornication causes, 2 were causes brought against persons who had omitted to pay the subsidy to the Archbishop, 2 were inquisitions into the right of patronage to a living, 2 were for institution and induction into a living.

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* With gaps. Folios 34 to 35, 50 to 60, and 92 to 94 are not transcribed.
(I) With the interval of folios 83 to 116.

One was a cause brought for the rendering of an account, I was a cause for the exhibition of letters of administration, I was for the exhibition of letters of sequestration, I was for the deprivation of a cleric, I was a cause where the office was promoted against sequestrators, I was a cause against persons who had been married clandestinely and [illegible] who had been present at the marriage, I was a business of inquisition into the validity or nullity of a marriage, I was a cause against a layman who had a prebend, and I was a cause against a person who had subtracted a benevolence.

The fourth sample is taken from the Audience or Chancery court book for I595-99. Here a survey has been made made of folios I to 74. These folios cover the period between 25th September I595 and 24th September I596.

There are 98 causes, of which 5I are for some unknown cause, 29 are causes of correction for adultery or fornication, 4 are for admission and institution to a benefice, 2 are inquisitions into the right of a patron to present to a living, 2 are appeal causes, 2 are for the exhibition of an inventory, I is for subtraction of parochial rights (probably the non payment of obventions) I is for non payment of pensions and synodals, I is brought because of non contribution to the church fabric, I is brought against a non-resident , I is a contempt cause, I is a deprivation cause, I is brought because of dilapidation, and I is brought because of incest.

It will be seen that although the numbers of the various causes varied from year to year the types of causes were more or less the same. They can be divided into categories, which , while not completely satis-

-factory allow for separate consideration of the work of the court.

In the first category may be included those causes which pertain to ecclesiastical benefices . The first type of these is causes brought for admission and institution of a cleric to a benefice. They were mostly for the admission of clerics to benefices within the diocese of York, out of 21 causes of this sort in the 1570-74 court book 13 causes are specifically mentioned as having been brought for admission to benefices within York diocese, while most of the others probably were as well. Three causes are noted as being for admission to livings in Chester diocese. (1) Possibly these livings represented pockets of Archiepiscopal jurisdiction within the diocese, they may even have lain in the gift of the Archbishop. It is worth noting that 2 of the causes for admission to Chester benefices are for the same living, which was filled and then became vacant again.(2) The other institution , that of John Shereburne to the rectory of Bury in the diocese of Chester is made because of the Archbishop's visitation. The rectory is ' vacant by the resignation of Gowther Kenyon, cleric, last incumbent there,' the admission belongs ' to the most Reverend Father by reason of the Metropolitical visitation of the said Most Reverend Father .. and reserved, with other spiritualities to the same Most Reverend Father notwithstanding the dissolution of the same visitation.' (3) Most of the causes were brought for admission to vacant benefices and 14 of the benefices in question are noted as being vacant. (4) Sometimes the heading contains an additional note naming the patron who has presented.

(1) ' Audience ' Crt. Bk. 1570-74. Fs. 5, 16, 28, 82. (2) Idem. F. 16, 28. (3) Idem F 95. (4) Idem F 5.

The other surveys bear out these figures, most of the benefices to which admission is sought are in York diocese, with an occasional benefice in Chester diocese.

Not all the causes are brought for admission to vacant benefices, some are brought against a cleric presented by a rival patron or already in possession. (I)

There are not many examples of the next type of cause, that of removal or deprivation , one of them is brought by one cleric against another (2) another by the patron of the benefice against the incumbent.(3)

There is only one double querele in all the surveys that brought by George Hesketh against William Bishop of Chester for his admission to Halsall rectory, in the diocese of Chester. (4)

Of three businesses of inquisition into the right of a patron to present in I570-74 two are mentioned as being from York diocese, (5) while another two in I595-99 are both from York as are two more from the survey from I575-79(6)

The causes for admission of resignations and for tolerations or faculties might be expected to be enrolled elsewhere as has been already said. There do not seem to have been many non residents proceeded against , three causes in the I570-74 survey were brought out of office, but another (7) was brought by the churchwardens of Gedlinge against the incumbent of the one half of their church .

The importance of the next category of causes to be considered-

(I) e.g. 'Chancery ' Crt. Bk. I575-79 F I2. (2) Idem F II4. (3) 'Chancery' I595-99 F 4I. (4) 'Audience ' Crt. Bk. I570-74 F 5. (5) Idem F 76,I73. (6) 'Chancery ' I595-99 F 29,36, and ' Chancery 'I575-79 F 67,90. (7)' Chancery' I595-99 F 59.

- that of correction of the morals of the Archbishop's subjects, was considerable. The number of causes of this sort varied considerably, for instance there were only 7 during I570-74, 24 in the survey of I575-79, and 29 in I595-99. Some of these causes were brought in by the Archbishop's visitation, for example there was one cause against a Thomas Bonwell of Osmatherton ' in the jurisdiction of Allerton and Allertonshire and now in the jurisdiction of the most reverend Father Matthew, Archbishop of York during his ordinary or metropolitical visitation.' (I) Visitation causes often took a long time to come into the court, so it is difficult to say definitely how many of these causes concerning correction of morals are the result of visitation. For instance one offender is described as having been ' presented in the late Lord Archbishop his grace's visitation for fornication with one Janet Bylclyffe, by her confessed.'(2)

Moreover churchwardens could complain to their ordinary about an ecclesiastical offender at any time , without waiting for a visitation. Thus some of St. Martin's parishioners went privately to John Rokeby to complain of the drunkeness of their vicar. (3)

Almost all the offenders in fornication causes were presented by the churchwardens, whose presentment is often quoted, one offender was ' presented for keepinge in his house very suspyciously Jane Parkeson, wief of John Jackeson beinge commanded to the contrary by the Deane of Rypone.' (4) Probably most of the fornication and adultery causes were brought into the court by the visitations. There is negative evidence for this in the

(I) ' Chancery' I595-99 F. 49. (2) AB 4I/I8. (3) RAS. 4. 24. (4) 'Chancery' I575-79 F II8.

fact that on folio 95 of the I570-74 court book it is stated that the visitation has been dissolved, and afterwards there are only three more causes of fornication or adultery. The large number of these causes in the other court books is probably due to the fact that there was a visitation going on.

Correction causes against clerics such as that brought against Christopher Michell rector of Exerton, who had neglected his duties and consorted with Catholics , (I) were probably more often taken into the High Commission.

Causes against sequestrators are fairly numerous, as they are in some other courts , sequestrators seem to have been a perpetual source of trouble at York. The majority of the causes in the Audience or Chancery were brought by the unfortunate rector or vicar who had stepped into the benefice denuded by the sequestrator. Of the 9 causes of this sort in the I570-74 survey 6 were brought by clerics, on the other hand there was at least one cause proceeded in out of office.

The causes against detainers of the subsidy, which was a payment ' conceded to the present Lord Archbishop,' (2) are more important than their mere number would suggest, as they often involved a considerable number of people. One typical cause involved ' Laurence Mytchell, cleric, farmer of the rectory of the church of Busshop Wilton, Ralph Pickering cleric, vicar of Hayton, William Harte, cleric, vicar of Gyvendale, Thomas Newlove vicar of Kylnewicke, Lambert Ketlewhen vicar of Southeare, John Hardie, vicar or curate of Kirkburne(and) Thomas Birkheade vicar or

(I) ' Audience ' I570-I574. (2) Idem F I3I.

curate of Fenbie.' (I) Altogether three causes in the I570-74 survey involved I8 people. Another kind of ' administrative ' cause was that brought against the detainer of pensions and synodals. It may be as well to remember here that while pensions were ' the yearly sum due from the proceeds of any college, bishoprick, deanery, cathedral church , or any other ecclesiastical foundation ... payable to any other church ' (2) synodals were ' a pecuniary tribute paid by the inferiour clergy to the bishop ;,. so called because it was usually paid at the Bishop's synod or visitation.'(3) It is worth noticing that Grindal is still suing various persons for detention of pensions and synodals due to him after his translation.(4) The greatest number of these seem to be owed by lay tithe farmers (5) though there are clerical offenders as well. Grindal's successor, Sandes, also had difficulty in collecting his pensions and synodals. (6) Procurations, which it will be remembered are ' certain sums of money which parish priests pay yearly to the Bishop or Archdeacon ' ratione visitationis.' (7) seem to have been another charge on benefices which was paid on the ' better late if ever ' principle at York. In one case they had been owing for two years , and they are described as being-

' due to the most reverend father and lord Edmund, Archbishop of York by reason of his metropolitical visitation in the year of Our Lord I574 and his ordinary visitation now celebrated and exercised in the said deanery.' (8)

(I) 'Audience ' I570-74 F I3I. (2) Law. P. 46. (3) Ayliffe P. 433. (4)'Chanc.' I575-79 F 47. (5) e.g. 'Chanc.' I575-79 F 48. (6) Idem F 69. (7) Ayliffe P.429. (8) ' Chanc.' I575-79 F I9.

Most of the procurations sued for are due from tithe farmers, sequestrators or the occupiers of the fruits of a living, many of whom are laymen,(I) though there are a number of clerical offenders in this respect. (2)

As might be expected from the Vicar General's commission, the testamentary jurisdiction of the Audience or Chancery Court was mostly exercised over the property of beneficed clerics. Of the 4 administration causes in the I570-74 court book all are clerical,(3) of 4 causes for probate 2 are noted as being for the probate of clerics' testaments. (4) One cause, for the exhibition of an inventory (5) is also clerical, while two causes against administrators are both concerned with clerical testaments. (6) All the testamentary causes in fact would seem to concern clerical property except one for the exhibition of an inventory (7) which is not definitely said to refer to a clerical testament.

The number of appeals stress the fact that York was a small province. The survey for I570-74 gives an average of only one a year. Excluding the appeals in the I579-84 survey two appeals came from Chester, two from Carlisle, two from York and one from the diocese of Sodor and Man. It is interesting that the Audience should have taken appeals from the diocese, they were ; an appeal by John Bradley of Kyldewycke in the Archdeaconry of York against Robert Ramsden, Archdeacon of York (8) and an appeal by Robert Cress, rector of Wilford in the Archdeaconry of Nottingham against John Lowth Archdeacon of Nottingham. (9)

(I) e.g. I575-79 F 26. (2) See generally I575-79. (3) 'Audience ' I570-74. F 79, 22, 54, 79.(4) Idem F I56,I2I. (5) Idem F. I. (6) Idem F I73,I74. (7) I5[illegible]-I599 ' Chancery ' F I. (8) ' Chancery' I595-99 F 34.(9) 'Audience' I570-74. F 28.

It is usual to equate the Court of Arches of Canterbury with the Court of Audience or Chancery, or the Court of Chancery, as it was later to be called.(I) There were obvious resemblances; both courts were held by the Archbishop's Official Principal both of them were concerned with appeals, and in both of them, so far as can be seen any ecclesiastical cause might be tried. (2)

There were however differences. The Court of Audience or Chancery was not and had never been a consistory court, as the Arches had . Nor was it the principal court of the province, in the sense of being the busiest. The Consistory at York seems to have been much busier than the Audience, and therefore more nearly resembles the Arches .

THE DEAN AND CHAPTER COURT.

As the Dean and Chapter Court was a peculiar and stood outside the hierarchy of diocesan and provincial courts it has been kept to the last.

The Dean and Chapter were the holders of the greatest peculiar jurisdiction within the diocese. This jurisdiction had been confirmed to them by a charter of King Edward the Sixth, dated 20th April I547, which confirmed their spiritual jurisdiction ' within those parishes, towns and places which they or their successors formerly used.' (3) At the time at which Lawton, the York antiquary, wrote (I840) the Dean and Chapter exercised all episcopal functions except Ordination and Confirmation, together with contentious jurisdiction, and the right of granting probates and administrations of persons dying within a large number of parishes and chapelries, except where the deceased had left ' bona notabilia,' in any other diocese or jurisdiction within the province of York.' (4)

(I) R.J. Tanner ' Tudor Constitutional Documents I485-I603.' P 359. (2) Eccles. Crts. Comm. I883. Hist. App. I. P. 3I., Conset Pt.II. Chap.II.Sect.2. (3) Lawton's ' Dioceси Eboracensi.' (4) Idem. P. I.

A list of these parishes and chapelries is given by Lawton (I) ' The Dean and chapter ' to continue in Lawton's words ' have also what is called contentious jurisdiction or the right of deciding causes of ecclesiastical cognisance, over all the places where the Dignitaries and Prebendaries have the right of holding visitations and granting probates and administrations ; and therefore when any suit arises respecting any grant which would otherwise have been made by the prebendal or other peculiar jurisdiction, the probate or administration is in such case granted by the Dean and Chapter's Court : this jurisdiction also extends over the peculiar of Acomb and the dissolved prebends of Bishop Wilton, Masham, South Cave, and Salton ; the latter jurisdiction is now divided into two, viz. Salton and Wadsworth.' (2) Lawton then proceeds to give a list of the prebendal and peculiar courts over which this contentious jurisdiction extended. (3) For the sake of completeness it is worth noting that there were four prebends , Barnby Moor, Dunnington, Grindall, and Knaresborough which had either been dissolved or had been transferred to the diocese of Chester by Lawton's time .(4) Lawton adds the caution ' in fact wherever the Dean and Chapter had estates or temporal authority it is probable they exercised, at one time or another , ecclesiastical jurisdiction.' (5)

Fortunately it is not necessary to take Lawton's view of the extent of the territorial jurisdiction of the court without question, as most of the causes entered in the Dean and Chapter court books contain a note

(I) Lawton. P. 2. (2) Idem. (3) Idem. (4) Lawton P. 4. (5) Idem.

of the parishes from which one, if not both of the parties concerned came from. Indeed the actuary seems to have made a note of it whenever he could in case any complaint should arise later that the court had cited someone living out of its jurisdiction. A survey was made of the first 300 folios, or more than half of the I580-94 court book. (I) There seems to have been little variation from Lawton's list, at least there are very few localities which are not mentioned by Lawton. Causes were heard from Bishophill Magna (2) Wimbilton,(3) Westhorpe Malshard (4) Pidsburton, (5) and Rythe (6) which are additions to the list given by Lawton. A certain number of the prebendal courts, such as Apesthorpe, Bilton, Bugthorpe, Masham, Salton, Tockerington and Werthill did not send in any causes to the Dean and Chapter court at all during the period covered by the 300 folios , which was roughly from I580- I585. This does not necessarily mean that they were outside the jurisdiction of the court at this time; probably no contentious causes arose during this period in those particular courts.

Its connection with the prebendal and peculiar courts was probably a constant source of embarrassment to the Dean and Chapter Court. A typical complaint is the following ' Injunction Given to the Deane and Chapitor of Yorke.'

John Hercie knight, Roger Tonge doctor in divinitie, William Moreton esquiour, and Edmunde Farley, commissioners appoynted for our most dreid soveraigne lorde Edwarde the Syxth, by the grace of God of England.

(I) RAS 59. (2) Idem F 55. (3) Idem F 67. (4) Idem F 207(5) Idem F 216. (6) Idem F. I.

Fraunce and Irelande, kinge defendour of the faithe, and of the churche of England and Irelande supreme heide, his Visitacion in and throughe oute the diocese and province of Yorke to our derlie beloved in Christ the deane and chapitour of Yorke sendeth greting in our lorde.

WHEREAS : laitlie complaynt and relacion was maidd by diverse and sundrie persons that you, having peculiar jurisdictions in and throwe owte all churches, placis, parishis and townships to your churche or any minister of the same belonging or appearteaning, and that many poore men and wemen heretofore maiking theire recorse unto youe for the probacion of testamentes, administracions of goodes and other like causes have gone throwe with youe in the same accordinge to the kinge's lawes in that behalf, notwithstanding for as moche as due order and deligence of officers haithe not beyne observed, nother any persona appoynted to the registring and saffe keping of such recordis as thereunto apperteanethe, in such sortes that when copies and extractes of ony suche thing shuld be seene or sued forthe, the same can not be found or gotten, to th'entent justice hereafter maie be duelie and trulie to all persons ministred in this case, WE DO ORDOUR decre, and enyone youe by the auctoritie to us committed that nother youe , the deane of the said churche, nor any other prebendarie, canon or other officer of yourse, or ony of youre successours hereafter attempte, procede, or go throwe with approbacion, acceptacion and insinuacion of ony testament, administracion, or inventarie withowte the presence and actuarie note of the common register of

youre chapter for the tyme being, and that youe commite into his office and custodie all suche recordes if you have any suche officer, and if youe have none suche called the register or clerke of the chapter, that then youe take such ordour emonges youe for the saffe keping of suche recordes as to the lawe shalbe consonant upon payne of the lawe, and as youe will answer to the contrarie. Data sub sigillo nostro primo Novembris anno Domini millesimo quingentesimo quadragesimo septimo.

(Concordat cum registro ; per me Ed. Plankney) (I)

This injunction does not seem to have had much effect. In 1572 Grindal enjoined to the Dean and Chapter that -

' II. Item, whereas complainte haith bene maid by sundrye persons that in the peculiar jurisdiccions belonginge to the prebendaryes of the cathedrall churche of Yorke officers have not bene so diligent as they ought to have bene, in so muche as when extractes or copies of testamentes and obligations shoulde be served forthe oftentymes the same could not be fownd or gotten, to th'intente justice hereafter may be duelye ministred to all persons, we will and enjoyne that all persons havinge anye dignitie or prebende in the churche of Yorke have due regarde hereunto , and that they make their severall commissions for th' execution of their successors, within the space of twentye dayes after anye testament approved or administracion committed to anye person or persons do bringe or sende or cause to be brought or sente the testamentes so approved or administracions committed with suche inventaryes and obligations as shall thereunto

(I) 'The Statutes, etc. of the Cathedral Church of York.' 2nd. Edit. 1900. P. 66.

apperteine unto the office of the clerke of the deane and chapitor of York there to be registred and remayne of recorde, painge unto the clerke of the deane and chapitor such duetyes and fees for his paynes taking of and in the premisses as shalbe due in that behalfe accordinge to the statutes and lawes of this realme.' (I)

Part of the duty of the registrar of the Dean and Chapter then was to act as archivist for the peculiar judges.

The Archbishop could not give any order to the Dean and Chapter except after a visitation though he could give his friendly counsel to the Chapter at any time. (2) He had therefore nothing to do with the court except at visitation times, the appointment of the Auditor of the court was made by the Dean and Chapter.

The judge of the court had the title of the ' Auditor of causes or businesses of the venerable men the Dean and Chapter of the Cathedral and metropolitan church of the Blessed Peter of York.' His style is set out in the following court heading.

' Friday, viz. the 23rd day of January A.D. 1577 within the cathedral and metropolitan church of York in the accustomed place there before the venerable man Mr. John Rokebie, doctor of laws, judicially and publicly sitting as a tribunal in the presence of me William Fothergill, notary public.' (3) The commission under which the Auditor sat was conferred by letters commissional from the Dean and Chapter. Here is an example of

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(I) Reg. Grindal. F. I52. ' Injunctions gyven by the moste reverende father in Christe , Edmunde...unto the deane and chapitor of the cathedral churche. (2)York Cathedral Statutes P.II9. (3) RVII A 38 F. IC.

the Auditor receiving his letters commissional.

' John Whitefield, literate person appeared personally and presented to the same venerable man Mr. John Rokebie, doctor of laws, aforesaid certain letters commissional of the venerable men Dean Matthew, and the Chapter of the cathedral and metropolitical church of York to take cognisance of, proceed in, and terminate .. all causes and businesses pertaining to the said Dean and Chapter, directed to him, and sealed as appeared, with the common seal of them, the Dean and Chapter. And he petitioned that he should assume the burden of the execution of these letters on himself and decree to proceed in everything and by everything according to the force form, and effect of these letters. And then the said venerable man Mr. John Rokebie, doctor of laws, because of his reverence for the co. mission of the said venerable men, undertook on himself the burden of execution of these letters and decreed for his jurisdiction and that it be proceed - ed in everything according to the force, form, and effect of these letters commissional.' (I)

The scribe has not inserted the letters commissional in this case, nor have any been found in the other books of the court ; probably they did not confer any specific powers, but simply commissioned the Auditor to proceed ' in all causes and businesses pertaining to the Dean and Chapter,'as the note of their reception suggests. The deputations and surrogations give little further information about the court's jurisdiction.

(I) RVIIA 38 F 16. (2) Idem. (3) Idem.

Here is a typical one , which illustrates the practice of using advocates as substitutes for the judge. This practice was common to all the courts, but was probably often practised in the Dean and Chapter court, which seems to have been particularly dependent on substitutes.

' Teusday, viz. the 15th day of January in the year of Our Lord 1583, within the cathedral and metropolitical church of York near to the place of the consistory. Thevvenerable man Mr. John Gibson, doctor of laws, Auditor of the causes of the venerable the lords Dean and Chapter of the Cathedral and metropolitical church of York personally constituted, substituted, deputed, and put in his place his beloved in Christ Richard Hudson, Matthew Dodsworthe, Henry Swinburne and Henry Dethicke, bachelors of law, advocates of the court and Anthony Iveson and John Hunter clerics, jointly and separately so that there should not be a better condition of occupation, determining or following, but what one of them should begin any of them might freely prosecute, mediate, and finish, to take cognisance of and proceed in all causes, complaints, businesses, etc. moved or to be moved, devolved or to be devolved in this court. And he gave and conceded to them the power given and conceded to him in the letters commissional with any power of ecclesiastical and canonical coercion.' (I)

No example of the seal of the Dean and Chapter court seems to have survived ; it may possibly have been identical with the seal of the Dean and Chapter mentioned above.

(I) RAS 59.

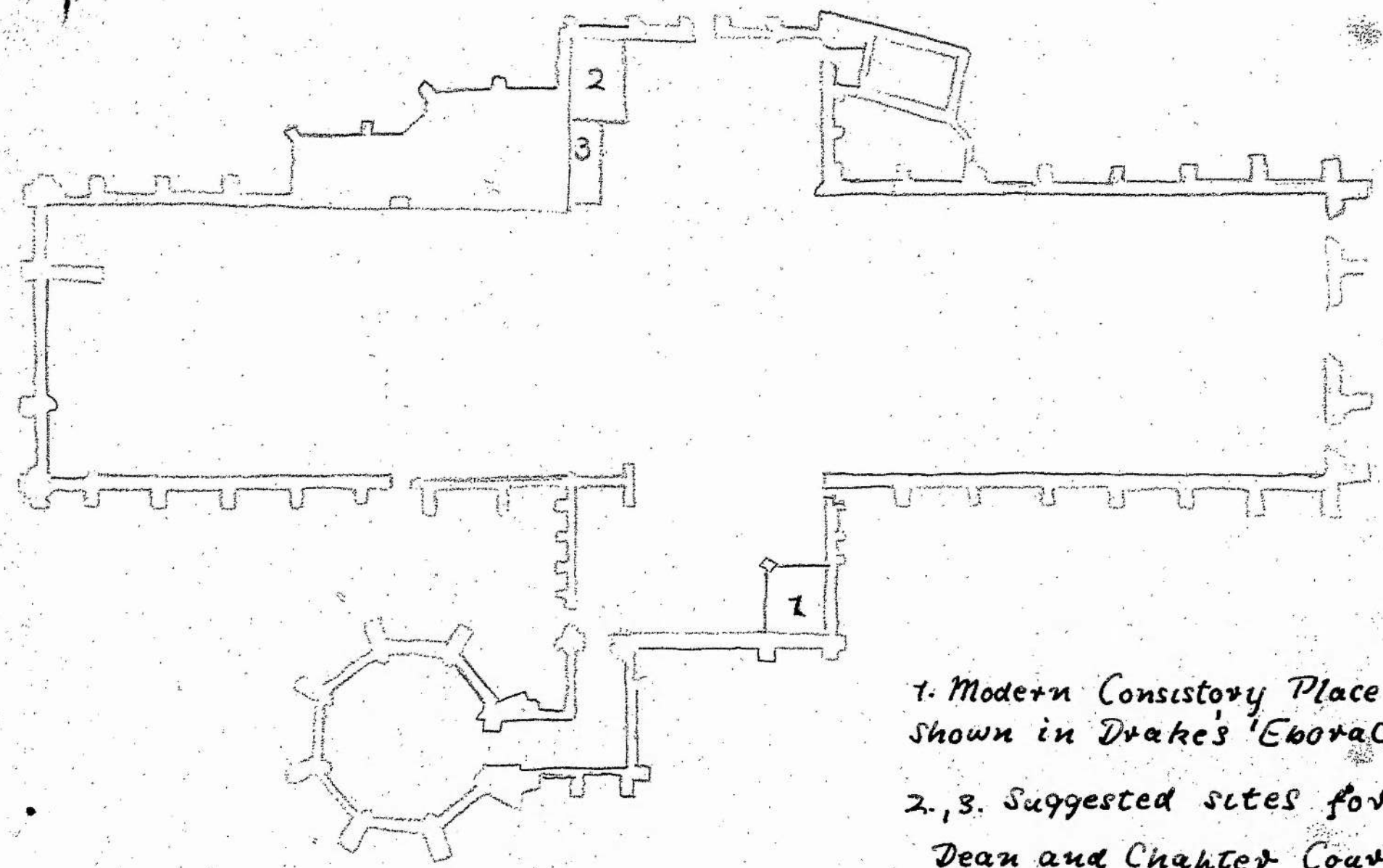
The court possessed a registrar ; during part of this period he was Richard Francklande, who is described as ' notary public, original registrar of the Dean and Chapter ' (I) and as ' principal registrar of the said Dean and Chapter.' (2) The scribe of the acts of the Dean and Chapter court was usually his deputy William Fothergill.(3) There was an office of the registry of the Dean and Chapter court, and the court books of the court were kept in it. (4)

Apart from occasional meetings elsewhere the court sat in the ' accustomed place for the hearing of causes of the venerable men the lords Dean and Chapter.' (5) This ' accustomed place ' appears during all the years covered by the court books so apparently the Dean and Chapter had a place of their own where they held the court. Where it was is a little difficult to say. It could not have been the consistorial place, as that admitted of a precise note on the part of the scribe. In an eighteenth century mandate the meeting place of the court is spoken of as being ' near the south door within the Cathedral.' (6) This suggests that the court met in one of the screened off ' cistae ' or box-rooms which are shown in Drake's plan of the Minster, and of which there are still a few survivors. (See plan on next page.)

The court met almost always on a Friday, though there were occasional Saturday meetings. The fact that there seems to be only one meeting a week, with few ' extras ' indicates that the court was not troubled with too much business. The sittings seem to have been mostly between nine

(I) RVII A 38 F I59. (2) Idem F I7. (3) Idem F I59 (4) Idem (5) Idem F I9. (6) Cause Paper File Gibson c. Barker I767.

Sketch Plan.



1. Modern Consistory Place as shown in Drake's 'Eboracum'

2., 3. Suggested sites for Dean and Chapter Court.

and eleven in the morning, with few afternoon sittings.

It is worth noting the terms, which were the same as those followed by the other courts. The first was Hilary Term, then Passion, (Pasche) then Trinity, then Michael. There were nine sittings in Hilary Term 1586-89, four in Passion, nine in Trinity, and eleven in Michael. (1)

During visitation times the Dean and Chapter court was held by the Archbishop's commissaries. ' The records of the registry at York abound in precedents'(of visitations) ' among which may be remarked those of Archbishop Holgate in 1552...the usual practice seemed to have been to appoint a commissary to hold the court.' (2)

Here is an example of an archiepiscopal commissary sitting in the court during the visitation of 1567, as recorded in the court books.

' Before the most reverend Father in Christ lord Richard by divine permission suffragan Bishop of the See of Nottingham, and the venerable man Mr. John Rokeby, Doctor of Laws, commissaries of the most Reverend Father and Lord Thomas Archbishop of York sitting judicially and publicly as a tribunal, sufficiently and legitimately deputed to exercise ecclesiastical jurisdiction belonging to the Dean and Chapter of the cathedral and metropolitical church of York or the Dean and other canons and prebendaries of the same church separately during the diocesan visitation of the same Most Reverend Father now pending. ' (3)

During the sitting of the visitation commissaries the ordinary causes

(1) RAS 59 (Crt. Bk. D.& C. 1580-94. (2) Phillimore ' Eccles. Law.' Vol. I. Chap. IV. (3) RVII A 38 F I.

of the court were held back in the way described in the following heading.

' Hilary Term.

Friday, that is the I6th day of January I567 no court was held or had for the audience of causes of the jurisdiction of the Dean and Chapter of the cathedral and metropolitical church of York, since, on the same Friday the diocesan visitation of the Dean and Chapter of the same church exercised by the most reverend father Thomas, Archbishop of York was dissolved and terminated. But the aforesaid causes have stood in the state in which they formerly were and still stand after the dissolution and termination of this visitation. These causes return to the cognisance of the same Dean and Chapter.' (I)

The Auditor who reassumed the jurisdiction of the court was John Rokeby, one of the commissaries of the Archbishop during the visitation, an arrangement which emphasises the statement of the York Cathedral Statutes that during a visitation of the Dean and Chapter ' no entirely independent action is thus assigned to the Archbishop.'(2)

Shortly after this reassumption of jurisdiction a litigant's proctor came forward and alleged -

' That his master began to prosecute a cause of tithes against the same William Egglesfield, being of this jurisdiction, before the former commissaries of the visitation of the most reverend father in Christ lord Thomas, now Archbishop of York during this visitation and that the

(I) RVII A 38 F I6. (2) York Cathedral Statutes P. II8, II9.

said visitation is now dissolved and that it had been proceeded before the said commissaries in the said cause up to the reply of the principal party, inclusively, as much to the positions of the libel as to the additional positions, and that on the pretext of the dissolution of the aforesaid visitation the aforesaid cause was remitted and devolved to the state in which it was.' (1)

Some light on the appointment of visitation commissioners or commissaries is given by the commission enrolled in the 1580-84 court book.(2) This was issued to Robert Lougher . It gave him power to act as the archbishop's commissary in and through the peculiar jurisdictions of the Dean and Chapter of York, the Chapter of the Collegiate Church of Southwell, the wardens of the peculiar jurisdictions of Howden and Howdenshire and Allerton and Allertonshire and to take cognisance of and proceed in any ecclesiastical causes, businesses and complaints as much out of instance as out of mere mixed promoted or necessary office, and to hear discuss and terminate them, with all things connected with them. He was to admit and receive witnesses, letters, instruments and other kinds of proof or to reject them. He was to give definitive sentences or interlocutory ones, to inquire about the fruits of vacant churches and sequestrate them or have them sequestrated, to prove approve and publish the testaments and last wills of persons dying within the jurisdictions or to reject them , to commit administrations to the proper persons, receive accounts upon them , and dismiss the executors from rendering a further account. He might appoint a substitute or substitutes in his place.

(1) RVIIA 38 F 19. (2) RAS 59 F 12.

Robert Lougher then appointed substitutes to sit for him in the Dean and Chapter Court under the authority of this visitation commission.

' And then the same venerable man Mr. Robert Lougher, Doctor of Laws substituted and put in his place the venerable masters William Palmer, Chancellor of the cathedral church of York, Ralph Coulton, S.T.B, archdeacon of Cleveland, George Slater, S.T.B... to take cognisance of and proceed in all causes and businesses moved or to be moved in the said court during the aforesaid visitation, jointly and severally, so that there should not be a better condition of occupation, and gave and conceded to them and any of them, jointly and severally all and every power conceded to him in the said letters commissional.' (I)

All these people were persons who might have sat in the court at any time as substitutes ; it might be said then, that as regards the persons of the commissioners at any rate, the Dean and Chapter practically visited themselves during visitation.

The Dean and Chapter court drew its litigants from a very much smaller area than did the other courts, the Audience or Chancery for example. Consequently there are fewer litigants and fewer causes. Only 36 new causes were introduced into the court during I581 and 35 in I582. A survey has been made of the entire court book for I580-94 which covers the period between 20th January I580 and 7th April I594 , 549 folios in all.

It is worth noticing what these dates imply. The time between

(I) RAS 59 F I2.

them extends over part of the reigns of three archbishops ; the greater part of Sandes' the whole of Piers' and the very beginning of Matthew Hutton's. It forms in fact the largest profitable survey which could be obtained from a single court book at York, and it probably gives a good picture of the incidence of litigation during the Elizabethan period.

During this time there were upwards of 450 causes entered in the court book. Of these 103 were brought for some unknown reason. The next largest category is that of the defamation causes, of which there were 132, a number which indicates the great popularity of this kind of cause at the time, a popularity which is borne out by the statistics compiled from the significavits.

Next important are the tithe causes, causes for subtraction, that is non payment , of tithes. There were 110 of these. Some of them were brought by tithe farmers (1) of whom one was a woman, Isabel Hall. (2) Some are brought for tithes and ' other ecclesiastical rights.' (3)

Next important are the administration causes, of which there were 23. Other testamentary causes were ; causes against executors, of which there were 4, and against administrators, of which there was 1. There was one cause for the exhibition of an account, and 4 for the revocation of letters of administration. There were 18 causes brought because of the subtraction (i.e. non payment) of a legacy. There were 2 causes of subtraction of portion , that is a child's share of his parent's estate, and one cause where the office was promoted to make ' Janet Walker, wife

(1) RAS 59 Fs. 27, 28, 500, 511. (2) Idem F 125. (3) e.g. Idem F 58, 170, 203.

of William Walkar and widow of William Fontaure of the jurisdiction of Helperbie take a sufficient bond for the portion of the son of the said deceased.' (I)

There were 4 causes against 'temerary' that is rash administrators. There were I4 causes brought to obtain the probate of a testament. One cause was brought for the acceptance or revocation of an administration, 3 were brought for the exhibition of an inventory, 2 of them for the giving in of an account as well. One of these last was concerned with the estate of Robert Burland, a vicar choral, (2) indicating that the jurisdiction over the wills of beneficed clergy exercised by the Audience or Chancery did not extend to the peculiars, as might be expected. There were two causes brought against the subtracters of a mortuary.

There were I9 matrimonial causes, 6 matrimonial and filiation causes and 6 filiation causes. There was one cause for restitution of conjugal rights and I cause for the proof of contract and solemnisation of marriage.

There were I4 causes of correction against fornicators or adulterers.

There was one cause of subtraction of parochial rights, and I cause brought because of non contribution to the church fabric .

(I) RAS 59 F 438. (2) Idem .

CHAPTER THREE. THE OFFICERS OF THE COURTS.

I. THE APPARITOR.

' Apparitors ' says Ayliffe ' are such persons as are always ready at hand to execute the proper orders and decrees of the magistrate or judge of any court of judicature ; and they constantly wait in court to make a due return or report of what they have done in pursuance of such orders and decrees, and to receive such other commands as the judge shall please to issue forth. ' (I)

The business of an apparitor was to convene and cite defendants into court and to introduce the process ' emitted ' that is, sent out, by the judge. (2) Lyndwood's ' Provinciale ' distinguished between a riding and a foot apparitor and limited the number of riding apparitors a Bishop might have to one. (3) Ayliffe remarks that ' neither the number nor the distinction of riding or walking apparitors is now much regarded but as the conveniency of serving the processe requires.' (4) This was probably the case in Elizabeth's day, in any case there was no limit to the number of apparitors that an Archbishop might have. In the case of York a fairly large number of apparitors seem to have been required, probably most of them were riding apparitors.

Apparitors were chosen by the ecclesiastical judge, who might suspend them for misbehaviour, but not remove them at discretion when they

(I) Ayliffe. ' Parergon' P. 67. (2) Ayliffe 68. (3) Lyndwood Lib. 3. Tit. 22 Cap.7. (4) Ayliffe. P. 69.

held their offices by patent. (I) Apparitors might lodge in the houses of the parish priests to whom their mandates were directed, but they were not to ask for money, but merely take what meat and drink was provided for them ; they were obliged to deliver their processes themselves, and not to entrust this duty to others. (2) Although an apparitor was an ecclesiastical officer, and was accordingly usually punished by ecclesiastical law, an action could be brought against him at common law for any falsehood committed by him in the performance of his office. (3)

Besides his more usual name the apparitor was also called a mandatory or a summer or summoner. He was most usually called a mandatory at York.

The principal apparitor for the Archbishop's courts of Chancery (that is Audience or Chancery) Consistory and Exchequer was the Apparitor General . Here is Grindal's commission to his Apparitor General.

' Edmund etc. To allf faithful Christians who may see or hear our present letters. Greetings in the eternal Lord. Know that we have given and conceded, and have confirmed by this present writing to our beloved in Christ Richard Flewman alias Love of Elyston near to the city of York the office of our Apparitor General, and apparitor of our spiritual and ecclesiastical courts whatsoever in and throughout our whole diocese and province of York to be held in any place, giving and conceding to the same Richard Flewman alias Love power and full authority so often and when there should be need by him or by his sufficient deputy to make citations and other mandates or processes in so far as either by

(I) Phillimore. Ecclesiastical Law. Chap. 4. Sect. 6. (2) Ayliffe. 67.
(3) Idem 70.

law or custom they can or ought to be made in our aforesaid courts, and rightly, legitimately, duely and conveniently make certificates upon these citations and processes and further to do and exercise by himself or by his deputy all and singular those things with all and singular their rights and all the things pertaining to them which are accustomed to be done by our Apparitor General in the diocese and province , and our aforesaid courts , to have, hold, enjoy, exercise and occupy the said office by himself or his sufficient deputy as long as our good pleasure lasts.'

(And we have conceded to him) to receive the income due from any persons for the said office and customary of old times in for and because of spiritual or ecclesiastical causes, matters or businesses whatsoever moved or moving, as much before us in the courts of Chancery, Consistory, Exchequer, or in our visitations, as before our Chancellor, Vicar General in Spirituals, the Official of Our Consistory Court of York or our Receiver of the said Exchequer or Commissary for the time being within our said diocese and province.

(Also) to ordain make or depute a deputy with all other fees or emoluments due or customary to the said office, at our good pleasure, as is said, so long as it lasts.

We order therefore all and singular our subjects within our diocese and province of York aforesaid that they duly obey and exert themselves sufficiently for him and his deputy in these things which pertain to this

office .

In witness of which thing we have had our archiepiscopal seal attached to the presents. Given in our Castle of Cawood the first day of September, the Year of Our Lord 1570 and the first year of our translation.'(1)

Richard Plewman did not enjoy the fruits of his office long, for shortly afterwards a new Apparitor General is mentioned , William Gibson.(2) Another Apparitor General, Thomas Southworthy, is described as ' generosus' which makes it seem likely that he did most of his work by proxy. (3)

The Apparitor General's tenure of office lapsed with the death of the Archbishop who had granted his commission. On the death of Archbishop Thomas Young Richard Smerthwaite, the then Apparitor General handed over to the Dean and Chapter the rod which symbolized his office. (4) It was given back to him for the time being. Although only one deputy is mentioned in the commission there were probably several, as well as under apparitors, or mandatories.

The Dean and Chapter had their own apparitor . A commission to such an officer , dating from some time in the first half of the sixteenth century , combines the offices of apparitor and janitor of the Close.

' Know that we have given and conceded, and have confirmed by the presents to our beloved servant William Johnson, alias Copper, the office of our Apparitor within our jurisdiction in any place, to the end of his life, with all and singular the fees due and customary to it of old, and we make and appoint and have conceded to him to be apparitor and to occ-

(1) Young and Grindal Act Bk. F 142. (2) Young and Grindal Act Bk. (3) AB 52 F 212. (4) Arch. Reg. 30 F 41.

-upy and exercise the said office of apparitor by himself or by his sufficient deputy with all the fees due and customary to the same office of old.... And we have conceded to the same William in the way and form aforesaid , to the end of his life, the office of janitor of the Close of the said Church of York; he is to take and receive annually for his salary the sum of ten shillings of legal English money.' (I) George Halliland is mentioned in the records of the Dean and Chapter court as being the sub apparitor of the court during part of the Elizabethan period. (2)

The duties of an apparitor have been described by the authorities quoted above and outlined in the two commissions cited. He waited in the court room to take away citations or writs for parties wanted in court, delivered them to the persons named in the citation , or to some nearby cleric, such as a rural dean or a parish priest, who could cite the people concerned, and made a certificate of the serving of the citation or else certified non performance. The certificate of the citation will be illustrated in the next chapter , it was usually a note written on the back of the citation, which was brought back by the mandatory after being shown to the cited party. The mandatory need not travel until he found the party to be cited , in some cases he was merely a link in the chain of persons giving effect to a citation. It may not be amiss to say something about the directions put at the head of the citations in the precedent books, as they throw a good deal of light on the way

(I) RH.I. RH. 55. (2) RAS 59.

in which the citations were served , or rather ' made known ' to the persons concerned. In theory any literate person could act as a mandatory and inform a cited party of the citation for him. The rural deans and parish priests were brought largely into the machinery of citation, indeed that machinery , and consequently the courts themselves, could not have gone on without their constant cooperation.

A citation might be directed to ' all and singular persons ,' who were ordered to cite the party concerned (I) or it might be directed in this way and also be directed to some particular person, ' the curate of S. ' for example who was ordered to cite the party. (2). It might be directed to the curate of a particular church even if the court official was not certain of the name of the church , an example runs ' The (Commissary of) the Official etc. to the curate of B. alias K., I believe more properly K. ' (3) Many citations are addressed to rural deans, ordering them to make the necessary citation. (4) It might be felt that a particular citation ought to be delivered by the mandatory personally, in which case it would receive a particular direction to him as well as a general direction. For example a citation runs ' The (Commissary of) the Official to John Pollard, sub apparitor of the court of York and other rectors, vicars, chaplains, curates, and those not curates, clerics, and literate persons whomsoever wherever constituted.' (5)

The frequent use of the phrase ' we wish you, on reading the presents made to you (i.e. served upon you) to put full faith in the Lord

(I)e.g. Bodleian Lib. Bucks. Archd. M.S. d. 4. F 3. (2) Idem F 4. (3) Idem F. 4. (4) e.g. Idem F 2I. (5) Idem F I5.

in our messenger in this part ' (I) suggests that the mandatories divided up the diocese into deaneries, and one or more mandatories acted in each deanery. It might be added in conclusion that a citation might have a general direction and yet be delivered directly to the person concerned by the mandatory, as can be seen for instance in the certificate of a citation, which was enrolled along with the citation in the pages of the act book. The citation had a general direction, but is specified in the certificate as having been delivered personally by the mandatory. (2)

It is difficult to tell how much apparitors were paid at York. The fees in the southern provinces at this time were-

' For execution of every Citation of Instance, Excommunication and Decree per Mile 4d.

For every Detection 4d.

For every Suspension, Excommunication, and viis et modis ex officio per mile. 2d.

For every Testament or Administration above 5/- 6d.

For every Sentence I/4d.' (3)

It will be seen that here too the apparitor was not expected to deliver every citation, but merely ' carry' it part of the way in some cases. One of the fees mentioned is for detection. The use of the apparitor as a licensed informer probably caused more ill feeling against the courts than any other single feature belonging to them.

(I) e.g. Cam. Univ. Lib. M.S. Addit. 3II5 F 6. ' Another form of citation upon contempt.' (2) Sandes Act Book F 99. (3) Ayliffe P. 55I.

One Apparitor at York, the Apparitor General, could not have earned very much on ' piece work ' of this sort, as his duties kept him in York most of the week. He acted as crier to the court and called out the names of parties who had been cited . (I) Presumably this extra duty was made up to him in his salary.

The fees of the apparitor were computed by the actuary who wrote the court record, and from time to time they were counted up in the margin. A typical entry records ' Accounted thus far for the apparitor's fees, as much by Edward Fawcett, notary public, as by me, William Fothergill, also notary public , fifth of August I568.' (2)

It would be interesting to know what sort of persons the apparitors at York were. Most of them , such as John Barnes,(3) John Carrie (4) Richard Rothwell (5) and Edward Jones (6) are mere names, but they must have been men in whom the natural doggedness of the Yorkshireman had been reinforced by considerable courage. For the apparitor's calling was no ordinary one, nor were his wages won without a good deal of hardship and danger. After a perilous journey through trackless Cumberland or along the coast near Whitby where , ' the people are wholly defected... and resist all warrants and officers that come amongst them,' (7) he might consider himself lucky if he met with nothing worse than a door slammed in his face. It was often impossible to come face to face with the party to be cited . One Roger Beckwith of York was noted as keep-

(I) Cam. Lib. Addit. M. S. 3II5 F 235. (2) Act Book I553-I57I lib. 2.F9. (3) A 38 F I5. (4) A 38 F 8. (5) AB 52 F 203. (6) RVIIA 38 F 23. (7) S.P.D. Vol COLXX April 27 I599. York.

-ing himself ' in such sorte in his house as no processe can be served upon him for his apparaunce before his Ordinarie.' (I) Even if a vis a vis of the offender could be obtained it was seldom a pleasant one for the apparitor. When Edmund Frobisher of Normanton, the redoubtable uncle of Sir Martin Frobisher was cited to appear according to the ' force form and effect of the citation,' he ' asked to inspect the said mandate, and the aforesaid mandatory handed it to him to inspect on the condition that he would give it back at once when he had viewed it to the mandatory.' (2) Frobisher, however, refused to give it back, and ' he did so threten as well him the said Harryson * as also the said mandatarie that the said mandatarie did saye that he dyrst not sue any moo processes excepte they were suche processes as he myght sue without daunger.'

If the party to be cited was regarded as such a person that it would be unsafe to cite him, the mandatory took the safer course of leaving the citation, which in this case was known as a citation by ways and means, on the walls of his house, or on the gate of his parish church.

This practice is illustrated by a clause occurring in the ways and means citation . Here is an example of such a citation.

' Cite peremptorily N., personally if he can be apprehended and there is safe access to him, otherwise by public edict and citation, viz. by leaving these presents publicly fixed on the walls and posts of the parish church of X. aforesaid, and leaving them there for a time, and at his house of residence and also among his noted neighbours, familiars,

(I) Acts of Privy Council 1580-81. P. 340. (2) RVIIA 37 F. 12. * A party in the cause who had accompanied the mandatory, presumably to encourage him.

and friends, and by other ways and means whereby our citation may come to the knowledge of N.' (I)

This procedure was also used if the party to be cited had absconded, and it was remarkable how many persons found it advisable to be out when the mandatory called, among them a future Archbishop of Canterbury.(2)

Not only were exceptional qualities required in an apparitor, but he must be prepared to forgo the good opinion of his fellow men. Though no English apparitor ever attained to the reputation of ' Deil's Rattle Bag,' the summoner of a Scottish bishop among the more whiggish parts of the west country who is described, in a passage too memorable to need reference as quaffing wine with the other damned Cavaliers in Hell, the office of apparitor was probably the most unpopular calling in England, not excepting that of a hangman.

' An apparator is a chick of the egg Abuse, hatched by the warmth of Authority ; he is a bird of rapine, and begins to prey and feather together... his happiness is in the multitude of children,for their increase is his wealth, and to that end he himself yearly adds one. He is a cunning hunter, uncoupling his intelligencing hounds under hedges, in thickets, and corn fields..... his quiver hangs by his side, stufft with silver arrows, which he shoots against church gates, and private men's doors, to the hazard of their purses and credit. There went but a pair of shears between him and the pursuivant of hell, for they both delight in sin, grow richer by it, and are by justice appointed to pubish it, only,

(I) Bodleian. Bucks. Archd. M. S. d. 4. F I4. (2) See next chapter under ' Citation by ways and means.'

the devil is more cunning.... He accounts not all sins mortal, for fornication with him is a venal sin, and to take bribes a matter of charity. Thus lives he in a golden age, till death by a process summons him to appear.' (I)

It is significant that Chaucer's sumner's tale was turned into a Stuart ballad almost without alteration , and it is one of many warnings that the grievances against the courts were not so much the result of the breakdown of sanctions after the reformation as of faults inherent in the system itself, those however, were not so great as the Puritans would have us believe.

The core of the grievances against mandatories lay in the fact that they were encouraged to act as official informers. Contemporaries such as Overbury felt that they also invented offences and obtained money from them. In a diocese such as Yorkshire, where offences such as fornication were particularly rife, it must have been easy for an apparitor to make a dishonest living. Whitgift admitted in a letter that apparitors tried to beat up business for their courts when he spoke of-

' The infinite multitudes of apparitors and pettie somners hanging upon each courte, two or three of them at once, most commonly seasing upon the subject for every trifling offence, to make worke to their courte.' (2)

He may not have had Yorkshire in mind when he made this remark,

(I) ' Miscellaneous works in verse and prose of Sir Thomas Overbury Knt.' I756, I0th Edition. P. I33. (2) Strype's ' Whitgift' Bk. IV. P. 452.

and in fairness to the apparitors it must be admitted that Yorkshiremen themselves did not hang back from denouncing their neighbours to the ordinaries ' for every trifling offence ' as can be seen in the number of causes where the office is promoted by private persons.

While complaints against the apparitors in the courts are to be distrusted, as they seem in some cases to be merely a delaying device, as for instance where a party complains that he has not been cited in a proper fashion, there was at least one instance where the mandatory, Richard Rothwell, did not cite the party in due form, but merely reported to the court that he had done so. (I)

THE ACTUARY OR NOTARY PUBLIC.

The person who wrote the acts of the court was called the actuary, from the Latin ' actuarius.' He is also sometimes referred to as the ' scrinarius ' and ' scribe of the acts.'

' The law ' says Ayliffe ' enjoins all acts which are sped either in an ordinary or extraordinary judicial Process to be written by a notary public.' (2) The actuary's was as it were the first rank in the hierarchy of court officials and entry into the notaryship constituted the taking of minor orders in the profession of ecclesiastical law, so a few words concerning notaries may prove useful.

A notary public was ' he who confirms and attests the Truth of any

(I) AB 52 F 193. See AB 52 F 203 for what is apparently a complaint about the manner of a citation with intent to delay the Cause.

(2) Ayliffe. Parergon P 382.

Deeds or Writings in order to render the same more credible and authentick in any Country whatever ; and he is principally made use of in Courts of Judicature, and in Business relating to Merchants. For a Notary Publick is a certain kind of Witness.' (I) A Notary was a public person and could not refuse to serve persons who applied to him for help. For these services he could ask a reasonable fee, for which, if it were not paid, he could sue. A notary's evidence was a special kind of evidence, being ' so great that two idoneous witnesses are not of equal credit to the writing of one public notary, if his reputation and character be free from any taint of falsehood.' (2) Notaries public were originally licensed by either the Pope or the Emperor, but after the statute forbidding any person to sue for any dispensation or license to the Pope ,(3) he began to be appointed by the Archbishop of Canterbury through the master of faculties. Thus one notary of pre-reformation days at York describes himself as ' John de Quixley, York diocese, notary public by Apostolic and Imperial authority,' (4) another, Thomas Driffeld, was ' notary public by the sacrosanct Apostolic authority.' (5) After the reformation, and during the transitional period before the duty of appointing notaries devolved on the Master of Faculties, William Fawkes, the grandfather of Guy Fawkes, evidently with the intention of safeguarding himself, called himself ' William Fawkes of York diocese, notary public by authority of the Parliament of England.' (6)

The canonical qualifications of a notary were as follows ; he must

(I) Ayliffe Parergon. P. 383-386. (2) Idem. (3) 25 Hen. 8. c. 21. (4) Cam. 387. (5) Cam. Additional 3115 F 404. (6) Bodleian. Bucks. Archd. d. 4 M.S. F 54. In subscription to ' Instrument upon renunciation of the execution of the testament of George Lawson knight, deceased.'

be a trustworthy person, of some worth and dignity, a person well instructed in the business of a notary, and ' entirely adroit in framing acts of court ' and in examining witnesses . (I)

The notary was obliged to take an oath at the time of his admission that he would perform his duties in an honest manner , an example of the oath taken on the notary's admission has been preserved in the account of the admission of a notary at York. Here it is.

' The oath of Oswald Gryesdell, admitted to the office of notary public.

Wednesday, that is the IOth of December, year of Our Lord I589, in the consistorial place within the cathedral and metropolitical church of St. Peter at York, between the hours of nine and eleven before noon of the same day, before the venerable men Masters John Gibson and Richard Percie doctors of law in the presence of me John Atkinson, notary public.

There appeared personally Oswald Gryesdell, literate person of York diocese and exhibited to the same venerable men honourable letters of his promotion to the title of notary public and of scribe from the most reverend father in Christ and lord the lord John by divine providence Archbishop of Canterbury primate of England and metropolitan, made and conceded to the same Oswald Gresdall and sealed with the Faculties seal in red wax. (He also exhibited) private letters of the venerable man William Lewen, doctor of laws and Master or Warden of the Faculties directed under the own hand of the said Mr. Lewen, doctor of law, and subscribed by him, as appeared, to the same John Gybson and Richard

(I) Ayliffe P. 384.

Percie, doctors of law, jointly and separately for the reception of a corporal oath described in these letters of the lord Archbishop of Canterbury from Oswald Gresdell. When these letters had been read by me John Atkinson, notary public, the said Mr. John Gibson and Richard Percie at the instance and request of the said Mr. Lewen assumed on themselves the burden of execution of these private letters and decreed for their jurisdiction, and also that it should be proceeded in everything and by everything according to their force, form and effect. And afterwards, before the said John Gybson and Richard Percie and in the presence of me, the aforesaid notary public, the aforesaid Oswald Gryesdell took the said oath described in the same letters of the said most reverend father the Archbishop of Canterbury, when he had touched the sacrosanct Evangels.

When these things had been done in this way, the said Mr. John Gybson and Richard Percie, doctors of laws, decreed to certify etc. to the same Mr. William Lewen, doctor of laws, in Hilary Term next coming, or thereabouts, about their deeds in this part.' (I)

The private letters of William Lewen ran as follows.

' After my verie hartie commendacions. Whereas my lordes Grace of Canterburie by an instrument under the seale of the office of faculties hath bene contented to admit Oswalde Grysdale literate of the dioces of Yorke to the function of a Notarie publique, upon credible testymonye of his good lyfe and habylytie to exequte the same fforasmuche as the sayd Oswalde Grysdale (as it hath bene alledged) coulde not convenyently come uppe to London to take the othe requysite in that behalfe. These

(I) Begins. AB 52 F 220.

shalbe to requyre and aucthoryse you to mynister a corporall othe unto the sayd Oswalde Grysdale as it sett downe and comprysed in the said instrument. And of the ministringe of the sayd othe to certifie me under your hand at the doctors commons besydes powles * in London before the end of the nexte terme. And so I hartelie commende you unto the lorde, frome the sayd doctors commons the xith of Novembre 1588.

Your verie loving frende,

W. Lewin.

To the righte worshippfule my verie lovinge frendes Mr. Doctor Gibson and Mr. Dr. Percie or to eyther of them gyve these.' (1)

The instrument which contained the oath is too long to be quoted in full. The Archbishop gave greetings to Oswalde Greysdale and continued.

' We create you notary public as well as scribe and also by favour add you to the number and fellowship of scribes so that you may be able to exercise this office of notary and scribe from henceforth in any place and decree that full faith ought to be placed in the instruments to be made by you afterwards , in and out of court, when you have been previously examined and questioned in this part by the aforesaid authority, and have first sworn the oath written below to be taken from you.' (2)

The oath specified that the person taking it recognised the Queen as the only and supreme governor of the realm and renounced foreign superiority and authority.

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(1) Following ' Instrument of the Archbishop of Canterbury' beginning AB 52 F 220
(2) Idem. * Old St. Pauls.

He was to show faith and obedience to the Queen's majesty and her legitimate heirs and that he would enlarge and preserve all the jurisdictions privileges, pre-eminences and authority of the Queen or united to the crown. If any hint of danger to the crown come to his ears, or any peril to the church of England he would prevent it or have it brought to the notice of the Queen.

Besides this he would faithfully exercise the office of scribe and draw up faithful instruments according to what the parties asked for and not add or subtract anything. Similarly while making an instrument or protocol he would not alter anything against the will of the party. For this he would have his just and accustomed salary. The instrument issued under the Faculties seal. (I)

The notaries public acted as actuaries or scribes in the courts. It was unusual for a York court to possess a regular actuary, that is an actuary in constant attendance on that particular court. It did occasionally happen that a notary public might be constantly scribing in one court, and might even be a deputy registrar in it . It was, however, more common for the duty of writing the acts to be shared among two or more people. In the Dean and Chapter court book for the years 1580-94 for example Giles Fenay, John Atkinson and Vincent Fawcett all acted as actuaries at more or less the same time. (2) These committees of actuaries do not seem to have kept a regular rota. At first sight it might seem difficult for an actuary to take his place in the court

(I) AB 52 F 220. (2) RAS 69.

and begin writing the middle acts of a cause whose beginning he had not heard. The method of keeping the court books however, provided some practical safeguards against mistakes which might arise on account of the rather haphazard division of labour. Someone, perhaps the registrar, wrote out the headings of the causes which were due to come up for a day or so in advance , simply giving the names of the parties, and sometimes the nature of the cause. He was usually able to tell what had happened at the last court hearing, and he put this information into the court book in the form of a short summary, along with a precis of what would occur at the present court hearing. For instance if in a particular cause it had been the turn of Stocke, one of the proctors, to speak about the merits of the cause, it would be his rival's turn the following week, so the scribe or registrar would enter ' Mr. Broket has it or something of that sort. Accordingly the actuary had a blueprint of the acts already written for him, and merely had to fill in the spaces left for him with an account of what acts were done that day. Of course this method might go wrong if something unexpected happened and occasionally did, in which case the actuary of the day was obliged to score out the precis and start afresh. Although this division of labour existed, and it almost seems that some of the writing up of the court books was done by the person nearest at hand at the time some courts had a regular actuary.

Edward Fawkes is described as ' notary public and actuary of the Ex-

-chequer of York,' and seems to have been virtually acting registrar and almost certainly deputy registrar . He had the two keys of the office of the Exchequer in his possession, and he was the most usual scribe at the time. (1) Even so Robert Wright was obliged to deputise for him on at least three occasions. (2)

The duties of the actuary were to write the acts of the court, insert relevant documents such as commissions to the judge, letters from her Majesty's Exchequer or Chancery or the like, and keep a careful record of the fees which they received. These were counted up every so often and a note of the dates between which the fees had been received and the names of the actuaries concerned would be put in the margin. (3) The fact that the Exchequer actuary must have received fairly large sums for administrations, mortuaries, and the like , and must also have required a good deal of knowledge of the topography of the diocese and the location of parishes may have been the reason for the tendency of that court to have fairly settled actuaries, such as Edward Fawkes.

It is wrong to regard the actuaries at York as a separate profession. It is true that there are notaries who appear to act as actuaries and do nothing else, but a great many of them acted as proctors as well. A notary public who was admitted into the body of proctors as a supernumerary (a procedure described a little later) might have to wait for a long time until there was a vacancy among the ranks of the general proctors , so that he might be regarded, for practical purposes, as a notary

(1) Arch. Reg. 30 F 41. (2) Exchequ. Crt. Bk. 1570-72. (3) See example on page 109. Other fees , those of the judge and registrar, were accounted for.

permanently engaged in performing the function of an actuary, but most of them combined the office of actuary with that of proctor.

John Atkinson for instance wrote the acts in the Audience or Chancery court and was a general proctor (1) Michael Brownerigg was a proctor in the Dean and Chapter court, and a scribe in the Exchequer. (2) Edward Fawkes was a proctor and also scribed in the Exchequer. (3) William Fothergill was a proctor in the Dean and Chapter and also acted as actuary in the Dean and Chapter, and was in fact, a deputy of the principal registrar. (4)

The ' decree for precesdency of place betweene the Cittizens of Yorke and them of the Spirituall Courte.' (5) is even more definite on this point.

' Also he hath ordayned, determined and decreed that the Proctors of this said Courte which are Scribes or Registers of the said Most Reverend Father in God or of the deaner and Chapter of Yorke...'

As some of the courts met on different days from others and also at different times on occasion it would not have been difficult to combine the two offices.

Actuaries were of course paid for their services, but they were obliged, by the ' Provinciale ' of Cardinal Wolsey, to give their services free to clients who were appearing ' in forma pauperis.' (6)

The system of book keeping described above has been criticised on the

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(1) proctor- AB 52/156. actuary-AB 52/2. (2) proct. A 38/5. act. AB 40/4. (3) proctor- ' Guy Fawkes' Wm. Camidge. Burdekin's Almanac. York County Lib. Y. 920. (4) pr.RAS59/6. act.RVIIA 38/I. dep. reg. RVIIA 38/I9. (5) B.M. M.S. Add. 33595. (6) Wolsey's ' Provinciale' Bk. 3. Tit. V.

the grounds that once the space between the headings of the day had been exhausted a cause might overflow into one of the following or preceding pages, not necessarily near to the start of the cause record, and that many causes are left hanging in the air, so that nothing can be learned as to how they ended. The actuaries were not to blame for this , as they inherited their system of keeping the record, which was , so far as can be seen, common to all English ecclesiastical courts. (I) Besides it is difficult to see what other system was practicable unless each cause was to be summarised on a separate sheet and the results collated, a needlessly laborious procedure. Fault admittedly can be found with the actuaries; they forgot the date and the rubric, they were careless about names, and they did not always record how a cause ended. It must be remembered however that the actuary was dependent for his information on the proctors, and when they could remember what had happened to a cause(and they frequently could not) the actuary added a note at the end of the record, such as ' Peace on the relation of the proctors.' If however a cause had passed to another court, the actuary would be wasting his time in noting down what had happened to it, as it was no longer a concern of the court for which he scribed.

On the whole the record was adequately kept, and it is remarkable that the actuaries should have troubled to write so much , and preserve interesting pleadings at great length. The records of the only compar-

(I) ' The Archdeacon's Court : Liber Actorum 1584.' 2 Vols. Oxfordshire Record Soc. Introduction.

-able court records, those of the Arches, seem very bare by comparison.

While trying out a new pen, or perhaps in moments of idleness the actuaries wrote down odd scribbles on the fly leaves of the court books which reveal a good deal of their attitude to life. There are little Latin tags, very professional forgings of their colleagues names, their own elaborate marks, and occasional jocular remarks such as -

'five eggs for a penny,
t'is good cheape.' (I)

or-

' To my vere lovinge freends the caupons * of the metropolitical..'(2)

They make fun of their friends -

' Go with Lord Jesus Williams. H. Swinburn.' (3)

- and of the country clients with outlandish names -

' Hammannington of Manninngton within the country of Cumberland.8 (4)

One actuary commented on life as he saw it in the following lines-

' To learne at large the arte of adulacion,
Yowe neid no other scholemaster but sir dissimulacion.
And learned is yt serves, and stands yowe in good steade.
At firste thereby to flye aloafte and cause men the to drede.
Thow shalte bye cunninge maike thy selfe Cameleonlyke
Who chaunges collowrs everye one but one eye livelye yet.
So thowe canste fame all things save in which all things ys,

(I) Citation Bk. I6II-I7. Fly leaf. (2) Idem. (3) Idem. * Shopkeepers (4) Idem.

Or otherwyse, save onelye lyes, they tales are not ymis.' (1)

Another actuary noted the death of a friend and colleague in the pages of the court book, in the style and language which that friend had used so often, noting sorrowfully that he was ' aged forty years and no more,' and then added in English.

'Frayle men, or man's more fraile defence,
Had never power to practise stayes,
Of this scelestiall Influence,
That governeth and guydes our dayes.
No cloude but wilbe overcaste,
And what now flourisheth must fade,
And that that fades revyve at laste,
To flourish as yt first was made.'
When I my country shall forgoe,
My carefull wyfe, young children two,
My home, my house , my welth withall,
No less doth man when death do call.' (2)

The picture of the actuary which emerges from the records generally is that of a man who had gone to a University, or who had acquired a good knowledge of Latin elsewhere. Besides being the first step in the ladder of promotion in the ecclesiastical courts, the function was itself a respectable one. An actuary was a man of standing. Witnesses were some-

(1) Fly leaf of 'Chancery' Crt. Bk. 1575-79. (2) AB 65 Fly leaf and F. 4.

lodged in his house for safety. (I) He had a definite, and a high place in York society. ' Scribes and registrars were to ' give place to the Sheriffes of Yorke for the tyme beinge, but shall goe before all other Cittiezens, yea such as have past that office.' (2)

THE REGISTRAR.

A registrar , or register as he was called at this time, was an official employed by the courts so that a judicial record of their acts might be kept. By canon law all acts which are conducted either in an ordinary judicial process or an extraordinary one must be written by a notary public or registrar, or by two or three fit and credible witnesses. (3)

His office, according to Law, consisted of three things ; in registering and enrolling all the judicial acts of the court, in delivering to the parties copies of all the judicial acts, and in keeping in his custody the originals of all such acts, which are called protocols, or notes and first draughts, so that they can be referred to in any dispute or difficulty. (4) An additional duty of the registrar was the examination of witnesses and the taking of their depositions .(5)

A registrar was appointed by the judge of the court, and he had to be acceptable to the parties whose litigation he recorded. (6)

Most of the work of recording the acts of the courts at York was done by the actuaries the registrar was probably more concerned with

(I) RVIIA 38F 82. (2) B.M. M.S. Addit.33595. (3) Law. Tit. IX. (4) Idem. (5) Law Tit. CX. (6) Idem. Tit. IX.

enrolling probates and preparing court documents.

There were several registrars at York ; the most important of whom was the Principal Registrar or the Archbishop's Registrar. This office was filled by Richard Franklande for a while. He is described as ' registrar as much of the Audience or Chancery Court as of the Court of Consistory,' (I) and ' principal registrar ' by Edmund Grindal. (2) His custody of the records of the courts is emphasised by the fact that he kept the keys of the Office of the Audience or Chancery and Consistory. He was only able to find one key to the office of the Consistory on the reassumption of jurisdiction at the vacation of the see on Young's death, although two were produced on a subsequent vacancy. (3)

William Franklande seems to have deputed William Fothergill as his deputy in the Dean and Chapter Court. Fothergill describes himself as ' deputy of Mr. Richard Frankland, principal registrar of the said Dean and Chapter.' (4)

The Principal Registrar probably had his office granted to him by patent of the Archbishop. Camidge mentions that Archbishop Lee gave William Fawkes a grant under the Archiepiscopal seal as registrar for the term of life. (5) A registrarship at York might also be granted for a term of years ; John Stanhopp seems to have shared the registrarship with Thomas Thompson by an arrangement of this sort in 1663. (6)

Here is an example of an early commission to a registrar. It was

(I) Arch. Reg. 30 F 41. (2) ' Chancery ' Crt. Bk. 1575-79 F 168. (3) Arch. Reg. 30 F 41. (4) RVIIA 38 F 19. (5) ' Guy Fawkes,' Burdeking Almanack.' York County Library. Y. 920. (6) Hist. M.S.S. Commission No. VII. P 173. House of Lords Calendar 1663.

made by the Official to his registrar.

' Comission made by the Official to his registrar.

W. of V. of O. to our beloved in Christ M.K. of K. cleric and notary public. Greetings. We depute appoint and create you of whose faithfulness and industry we have sincere faith in the Lord our scribe of all and singular acts in any causes moved as much out of office as at the instance of a party, or to be moved in any way in future in the said Court of York, and depute, appoint, and create you our Registrar . And we concede to you free faculty by the tenor of the presents to write these acts faithfully and to do and exercise faithfully all and singular other things which are known to belong in any way to this office.' (1)

The profits of the registrarship must have been considerable, they were stabilized for the southern province by Archbishop Whitgift in 1597, and the list of the registrar's fees runs into sixty items. It seems likely too that they were more certain to be paid than those of the proctor, for example. An examination of the significavits preserved in the Public Record Office shows that in some cases the first half of the expenses was required to be paid before sentence was given, (2) while contumacy fees, to give an example, had to be paid on the spot.(3) ' The Office would be careful enough for their fees,' remarks Proctor Busy Body in a Puritan pamphlet.(4) In view of the profits attached to the office it seems likely that registrarships were bought and sold. This practice was complained of by the Puritans, and one of

(1) Cam. Univ. Lib. M.S. Addit. 3115. (2) See P.R.O. C. 85. F 191/ 6. in the case of Breton alias Hydd. (3) See under Contumacy in the following chapter. (4) ' The Spiritual Courts Epitomized.' Harl. Miscell. Vol. II. p. 567.

their suggestions for reform was that ' Chancellorshippes or Registershippes be not bought or sold and suche as have obteyned the same by Corruption be removed.' (I) There was, of course no law at this time to prevent anyone from buying a registrarship if he wished to do so.

THE PROCTOR.

What was a proctor ? The Elizabethans themselves found his duties difficult to define, and one of the petitions put before Convocation at this time requested ' That the functions of doctors of law maye be distinguished from the offices of procurators and sett downe what belongeth to them severallye.' (2) This vagueness as to function may have been more apparent in the southern province than at York, certainly the York Provinciale suggests a reasonably clear distinction between them (3) and the public instrument which laid down the rules of precedency between the officers of the courts and the York citizens distinguishes between advocates and proctors, between advocates who were doctors of law and those who were not and between proctors who were registrars and those who were not registrars. (4) Ayliffe makes a useful distinction between the functions of the proctor and the advocate.

' Advocates ought to be well skilled in the Knowledge of the Laws, because it is their business to assist the litigants with safe and wholesome advice : And tho' Proctors have seldom much Skill in the laws, yet they ought to be perfectly well acquainted with the Practice thereof. Advocates are , as it were, the Guardians and Tutors of a cause ;

(I) B.M. M.S.S. Room Cott. Cleo F II. F 466. (2) Idem. Cleo. F II F 236. (3) York ' Provinciale ' Bk. II. Tit. V. (4) B. M. M. S. Room. M. S. Addit. 33595.

but Proctors are only in the Place of Curators in that respect. Wherefore a Person is said to be a Client to his Advocate but a Master and a Mandator to his Proctor ; and consequently an Advocate's Office may be perform'd out of Court, or the place of Judicature, which a Proctors cannot be. The Office of the former is difficult and honourable , but the Duty of the latter is easy, and of no honour at all.' (I)

Anyone could become a proctor who was not a person of high station a woman, a soldier, a person guilty of some crime, someone who had purchased the interest in a law suit, or a deaf mute. (2) There was also an age qualification, no one could become a proctor who was under seventeen years of age (3) or by canon law twenty five.

In order to become a proctor it was necessary first to be admitted a notary public . It was also the custom , somewhat later at any rate, to serve a clerkship of a certain number of years to a proctor, and pay him a sum of money for the privilege. The abuse of this system is touched upon in the ' Spiritual Courts Epitomized.' ' Nay the ultimum refugium fails us now ; That is to bring in a Boy with fifty or threescore Pounds, and within a Year or two, turn him away, but keep his Money.' (4)

In Phillimore's time the procedure in admitting a proctor was as follows. A proctor served a clerkship of seven years under articles with one of the thirty four senior proctors of the Court of Arches in London. At the end of this time the party was admitted as a notary by a faculty of the Archbishop of Canterbury, and a petition was then pres-

(I) Ayliffe P. 53. (2) Law. Tit. XI. [illegible] and Gibson 987. (3) Law Tit XI.
(4) Harl. Misso. Vol II p. 567.

-ented to the Archbishop accompanied by a certificate signed by three advocates and three proctors that the party applying had served as an articled clerk to a proctor of the court for the due time. If he approved this certificate the Archbishop issued his fiat, and a commission was directed to the Dean of the Arches, by whom the party was admitted under the title of a supernumbrary, with similar ceremonies to those observed on the admission of an advocate. (I)

It is interesting to contrast this procedure with that observed on the admission of a general proctor at York. The case of John Atkinson illustrates this.

First of all he was admitted notary in the Audience or Chancery court, in the way described above, and after that the next step was to be admitted as a general proctor. (2)

He appeared before the Official of the Consistory Court, Richard Percy (it will be remembered that the appointment of proctors lay in the duties of the Official, and was specified in his commission.) and exhibited honourable letters commissional of the most Reverend Father, Edmund Archbishop of York for the admission of himself , John Atkinson notary public, as a proctor general of the Consistory Court of York, and petitioned that he undertake execution of these letters on himself and decree that it be proceeded in all things according to the force, form, and effect of these letters. When the letters commissional had been read Richard Percy undertook on himself the execution of them and decreed that it be proceeded in all things according to their force and

(I) Phillimore. ' Ecclesiastical Law. ' Vol. II. Chap. 5. Sect. 2.
(2) See ' Chancery ' Court Book 1575-79 F 3 for his admission as a notary.

form. When John Atkinson had taken the oath described, expressed and specified in a certain act of the Parliament held in Westminster on 23rd January in the first year of the Queens reign (see the oath taken by the notary public , to defend the Queen) and the oath comprised in the statutes of the court for proctors desiring to be admitted in the court he was admitted to the general proctorship of the Consistory Court of York, by virtue of the letters commissional. The Official decreed further letters commissional to be made out upon this admission, and at the petition of John Atkinson ordered them to be inserted in the court book. (I)

The letters commissional which recommended John Atkinson follow immediately after the record of his admission. (2) They are dated I0th October I586 issued under the Archiepiscopal seal and addressed to Richard Percie, Official of the Court . They provide that John Atkinson is to be admitted as a supernumerary into the general proctorship of the Consistory, that is the number of proctors who might practise in the court, which was at this time fixed by the statutes and ordinances of the court at the number of eight proctors. These persons were at this time John Broket, John Farley, John Standeven , Winifrid Ellis, James Stock, Edward Fawcett, William Fothergill, and Adam Mason. Besides these persons Henry Proctor is mentioned, he may have been the scribe of the court as he id simply described as ' also notary public.'
John Atkinson was to be admitted as a practising proctor general when the number had grown less, either by death or retirement.

(I) Consistory Crt. Bk. I580-86. F I57. (2) Idem.

It is noticeable that John Atkinson is admitted as a proctor only of the Consistory Court, while a little later in the same book there occurs the record of the admission of a proctor as supernumerary into the courts of Consistory, Chancery and Exchequer. (I) Procedure followed in this case was similar to that used in the admission of John Atkinson. The letters commissional are inserted in the record immediately after the act of admission, and are as follows.

' Edwin by divine providence Archbishop of York, Primate of England and metropolitan . To our beloved in Christ Edwin Sandes, deacon, M.A. , legitimately deputed Official of our Consistory Court of York or his deputy or any judge of the same court. Greetings, grace, and blessing.

The knowledge of letters and practive in affairs and the other gifts of virtue and probity by which our beloved in Christ Edmund Lyndley, notary public is conspicuous indicate forcibly to us that we should honour his person with kindly favour, and special grace.

We therefore commit our power to you or your deputy whomsoever he is and concede full power in the Lord by the tenor of the presents, notwithstanding in any way any statutes and ordinances of our said Consistory Court of York possibly published to the contrary, to dispense to the same Edmund Lyndley to exercise the office of proctor publicly in these courts, if it should happen that the number of practising proctors in the said Consistory Court of York is not proportional and in accordance with its statutes and ordinances. Otherwise that it be allowed to the same Ed-

(I) Consistory Crt. Bk. I580-86. F I64.

-mund Lyndley to exercise publicly the office of a proctor as soon as and on the first occasion that the number of proctors now practising in our same court of Consistory should decline or happen to be less than at present , either by the resignation , cession, death, or renunciation of any of those now practising or by any other means, and this proctor be admitted to our said Consistory Court, also to the Chancery and the Exchequer and be attached to the number of proctors general of this Consistory Court of York in the aforesaid way and form, and when there has been first received from the said Edmund Lyndley notary public not only the oath described expressed and specified in a certain act of the Parliament held at Westminster on the 23rd of January in the first year of the reign of the most Serene Princess in Christ and Lady our Lady Elizabeth, by the grace of God Queen of England France and Ireland, defender of the faith etc., but also the oath accustomed and used to be taken in this part and specified in the statutes of our said Court of Consistory.

In witness of which thing we have had our Archiepiscopal seal attached to the presents. Given in our manor of Byshopthroppe, the 4th of February in the Year of Our Lord, according to the computation of the English Church, 1586, and the tenth year of our translation.' (1)

The proctors at York were accordingly formed into a close corporation, as the proctors in the Arches were, and the old Chancery barristers were in later times. While an advocate may have been able to practise in any court a proctor was obliged to confine himself to the

(1) Consistory Crt. Bk. 1580-86.

court or courts to which he had been admitted. Thus in a cause in the Court of Audience or Chancery one of the proctors petitioned that the allegation made by his opponent ought not to be admitted ' because the said Henry Proctor is not in the number of admitted or accustomed proctors in this court.' (I) It is likely that a proctor had to pay handsomely for his admission.

Most of the duties of a proctor can be more conveniently dealt with under the heading of procedure but something may be said here about their more immediate duties. ' Proctors ' says Phillimore ' are officers established to represent in judgement the parties who empower them (by warrant under their hands called a proxy) to appear for them, to explain their rights , to manage and instruct their cause, and to demand judgement .' (2) Almost all the work of preparing and putting forward a client's cause fell on the proctor ; the advocate had little to do except inform the judge of matters of fact and law before judgement, and advise his proctor during the cause . An Elizabethan writer on the Court of Arches remarks - ' A proctor's office is laborious and requireth moche busynes. First a proctor must take sufficient instructions of his clients and kepe every courte daye, remember every houre that is appoynted hym to doo anything at, sollicite and instructe his advocates, write and pen every instrument that shall be requisite to be made in his matier.' (3)

The proctors at York seem to have done a great deal of business,

(I) RVIIA 38 F 24. (2) Phillimore Vol. II. Chap. 5. Sect. 2. (3) B.M. M.S.S. Cotton. Cleo. F. I. F 9I.

all the more so as most of them practised in the Dean and Chapter Court as well as in the courts of Audience or Chancery, Consistory, and Exchequer. This is shown by the fact that out of a not exhaustive list of I4 proctors 8 definitely practised in the Dean and Chapter. (I)

The proctor's gown was a well lined one. Son followed father contentedly in the profession, the two Beysleys, for example, in the early part of the century. (2) Perhaps the most famous [illegible] of the Fawkes of Petergate, Guy Fawkes of Gunpowder fame, owed his downfall to the prosperity which he had inherited from his father and grandfather, and his absorption into the landed interest, where he associated with Catholic squires such as the Fullens. (3) Most of the proctors at York were comparatively rich men, able to send their sons to Cambridge if they chose, and owning lands and houses.

William Fothergill left £4 to be distributed among the poor members of Christ in the four wards of the city at the discretion of the Aldermen, and left lands and tenements in eight different localities in and around York. He also left his library and books on the civil law to his son Timothy at Trinity , Cambridge.(4) Adam Mason left a mansion house in Coney Street , a tenement and house in Micklegate, another two tenements, one in Micklegate, a ' greate house at the Barre,' and a house or cottage next the walls near Micklegate. (5)

(I) See Appendix VI. (2) RVIIA 29. (3) William Camidge ' Guy Fawkes ' Burdekin's Almanac. (4) York Probate Registry. (5) Y.P.R. Vol. 28 F 79I.

The proctor's income was derived from his clients in the ecclesiastical courts, his clients outside the courts, for whom he drew up indentures of apprenticeship and the like documents (I) and from any office, such as a registrarship, or actuaryship which he might happen to hold.

Proctor's fees in the southern province were fixed by an Ecclesiastical Constitution made in 1597 by Archbishop Whitgift, but here as elsewhere it is difficult to say how far York followed Canterbury's practice. It is noticeable that the proctor's fee for one judicial day, which forms as it were, a standard of other fees, is a shilling in the south (2) while the fee at York is constantly spoken of during this period as eightpence. (3) It seems likely that the proctor covenanted with his client for a sum exclusive of the regular fees . In view of the difficulty which some litigants experience in obtaining their expenses from a defeated opponent the proctors would have been unwise, to say the least of it, if they did not try to make certain of part of their fee in advance.

In addition a proctor might expect to obtain a ' gratuity ' an ex gratia payment exclusive of the regular fees which was presumably paid to the proctor at the end of the cause , if he had been successful , but perhaps paid at the end of every cause, as one of the two rascally proctors in the ' Spiritual Courts Epitomised ,' mentions ' my gratuity which I never failed of .' (4)

(I) See Bodleian Bucks. Archd. M. S. d. 4. F 27 for ' Indentures upon an apprenticeship.' (2) Ayliffe 552. (3)e.g. Exchequer Crt. Bk. 1570-2. F 75. ' Mr. John Broket... offerred expenses of one court day according to the style of the court, viz. viii d.' (4) Harleian Miscellany. Vol. II. P. 567.

The function of proctor was one of considerable honour. By the ' Decree for precedency of place betweene the Cittizens of Yorke and those of the Spirituall Courte,' (I) whereby Cardinal Wolsey revived an agreement between the then Archbishop of York and Nicholas Blackburne, Lord Mayor of York it was laid down that all ' Proctors of his saide Courte which doe not enioye the said offices (of registrars or scribes) shall give place to the Sheriffes for the tyme beinge and shall Associate (with) those which have bene Sheriffes but such Proctors shall take place of the Chamberlaines of the said Cittye for the tyme beinge, the Clerkes of the Maiors, Sheriffes or Communaltye of the said Cittye , the keeper or Maister of the Fraternitye or Guilde of St. Christopher and St. George for the tyme beinge .'

Both at York and in the southern province men who intended to practise as advocates spent some time as proctors first. Edward Fawkes, though he spent most of his life as a proctor ' ultimately succeeded to the higher if not more profitable position of advocate in the Consistory Court of His Grace.' (2)

Most of the proctors at York seem to have come from good families and had reasonable means . John Standeven for instance was probably a relation of the York Sherriff of that name ; he was able to take his law degree at Clare College Cambridge ,(3) while the Fawkes were a respectable family. (4)

There were many complaints against proctors at this time. People

(I) B.M. M.S.S. Room Addit. M.S. 33595. (2) Wm. Camidge ' Guy Fawkes,' Burdekin's Almanac. (3) ' Alumni Cantabrigienses.' (4) Wm. Camidge ' Guy Fawkes.' Burdekin's Almanac.

of the day felt that they were unlearned and petitioned ' That none be hereafter admitted procurator, register, or notarye that is not a bachilour of lawe.' (I) The same document suggests ' That Lawyers Registers, procurators and notaryes take not above ye fees sett downe in a table of every court where they exercise under payne of suspension of their place for a year.' (2) Joseph Hart, an Elizabethan J.P. , describes them as ' lewd proctors which carry the broad seal and the green seal in their bags.' Their profession, he says cynically is a cover for their real trade in receiving stolen goods.(3)

The most extensive body of criticism of the proctors can be found in a Stuart pamphlet printed in the Harleian Miscellany (4) This piece of trenchant satire was evidently written by some one who had considerable knowledge of the ecclesiastical courts. Almost all the crimes committed by the two rascally proctors, Busy Body and Scrape All might have been performed at York but probably most of them are examples of sharp practice among the London proctors . Here are some of the revealing complaints of the two proctors.

' Busy Body. We are utterly undone, this Parliament hath not only rendered us contemptible to the world, but hath deprived us of our practice...

(I) B.M. M. S. S. Room. Cott. Cleo F II F 236. (2) Idem. (3) Quoted in Tawney and Power's ' Documents ' ii. 343. (4) ' The spiritual courts epitomized, in a dialogue between two Proctors, Busy Body and Scrape All, and their discourse on the want of their former Employment.' London printed in I64I. Harl. Miscell. Vol. II. Page 567.

Scrape All. It is true Mr. Busy Body.... Bowchurch , that on a court day used to be fuller than at a sermon on a Sunday, and the Audience Court in Paul's where a man could not hear with his own Ears *.... are very quie' and peaceable now ; we cannot talk false Latin now, but it will be understood ; we cannot get ten pounds in Part for the Probate of a will, as corpulent Mr. Copper Nose our brother the English Proctor could, we cannot put Ponsonby's name to Articles for incontinency with the Privity of the Judges as heretofore we could and then compound for the Penance ourselves, as we have done with the Judge before his sentence.

Busy Body... You know when many Articles were drawn in the name of me necessarii promotoris Officii against any that we knew was rich , upon no ground at all, but Hope that he would forswear to take his oath, either to accuse or forswear himself , if he did refuse then we would be paid our Fees, Mr. Advocate, for perusing and subscribing the Articles a Piece, that is two fees, when it was all but one labour, myself for drawing them running up and down , sending my man and twenty pains more, that Heaven knows , I never took, my Fees treble and the Office would be careful enough for their fees, and then he remaining obstinate, My Lord's Grace would deal with him, as he did with others. Into prison with him, no Redemption. O Money Causes were pure good ones. A parson would spend more money, by delay, than the Benefice is worth. We could not endure Alimony, many of them were in forma pauperis.

* Proctors were notorious for their ' lowd and confused cries and clamours' at least in the southern courts . ' Constitutions and Canons Ecclesiastical. 1604.' CXXXIII. Bow church refers to the Arches Court.

Scrape All. A Pox on them! I had rather the Judge would have given Sentence against my Client than bestowed a Pauper on me ; I am sure the Creature, if he followed not his own business better than I he would have a cold bargain of it, for my part I fitted him, but sometimes he would present a George or the like to my Man, and if he looked after him, so, if not Vale Pauper ! I got very well by a Wench that has been undone in a dark entry . Sir John would commute her penance into ten pounds towards the Repair of Pauls' and then we would share it. A shop door could not be open on a Holy day, but the next Sunday the Church was saluted with a Coram nobis and if he did not appear whether he had heard of it or no - Dominus eum in scriptis excommunicavit. Let him appear when he would he must render down his Contumacy Fees or he remains and is accounted pro excommunicato and when he is restored Christi fidelium he must pay the Officers fees. Faith such businesses were pretty toys .

Busy Body. And I have gained well by a poor will, where the estate has not amounted to above forty pounds , I would persuade the executor for confirmation to prove it per testes, but first it must be proved in communi forma and by that time some twenty marks or such a sum would redound to me out of the forty. I never cared much for an administration.

Scrape All. But I did for I would get more by it... than you could by an ordinary will..... I should have thought it an ill day in the Vacation, if I had not got a piece.

Busy Body. Oh Brother ! you would not believe how I delighted in a Commission, which I would go into the country withal and expedite ; and if they would not give me Ten Pounds for it (which if a Country Proctor had done he would not have required above a piece) I would not make many delays for the matter , but have got it taxed by any surrogate (whom I could persuade) to twelve or fourteen pounds ; a motion (miss-print for monition) flies down and an excommunication after it , and so I lived in as much state as Augustus Caesar over your country... O but I was good at an Appeal as could be , for when the cause was ready for sentence If I thought the adverse party would not appeal, if sentence went against him I would persuade the Judge to give sentence against my client and then I would be sure to appeal, and when I had appealed , my bill would exceed a taylor's...

There are several things worth noticing in these quotations from the pamphlet. Scrape All is not worried by the fact that several parties stand excommunicate , because when they do come in they must render in their contumacy fees. This seems to be an indication that the failure of people to appear in the courts and their subsequent excommunication was not perhaps such a serious matter as F. D. Price has suggested. (I) This aspect of the courts will receive further treatment later.

Again it must be remembered that similar pamphlets appeared on the misdeeds of the Courts of Common Law during Commonwealth times. The Puritans were, in fact concerned to produce a defence of their actions

(I) E. H. R. Vol. LVII. January 1942. ' The Abuse of excommunication and the decline of Ecclesiastical Discipline under Queen Elizabeth.'

in print, suggesting that this may have been a commissioned pamphlet. At the same time it probably embodied popular grievances or misconceptions concerning the courts . An indication of this is to be found in the account of the reaction of the Council to that little known piece of Caroline drama, ' The Whore New Vamped.' An order of the King's Council, dated 29th September I639 instructed the Attorney General to proceed against the stage players of the Red Bull, who had ' for many days together acted a scandalous and libellous play in which they have audaciously represented and in a libel personated not only some of the aldermen of the City of London, and some other persons of quality, but also scandalized and libelled the whole profession of proctors belonging to the Court of Probate.' One of the characters ,'' one speaking of projects and patents that he had got mentions among others a patent for I2d a piece upon every proctor and proctor's man who was not a knave. Said another ' was there ever known any proctor but he was an arrant knave ?.' '

In spite of these complaints there does not seem to be any evidence for impugning the honesty of the proctors at York. They had no need to be dishonest, as they were fully occupied with honest work. The ecclesiastical courts indded , so far from declining, were enjoying a boom. ' The long peace ' wrote Whitgift ' which under her highnes, next after God, we have most peaceably enjoyed theise fortie yeares, as it hath filled the whole land with plentiful abundance, so hath no one state of the kingdom reaped greater fruit of it than those who in all her majesties

courts of justice, either ecclesiastical or temporal have spent their time either in administration of justice or as ministers and officers of those courts have followed the same.' (I)

At the same time there is one rather suspect incident in the life of Edward Fawkes . A memorandum records -

' Memorandum that this Wednesday beying the third day of Julii anno domini I577 my L. Archebusshope his Grace of Yorke in the great chamber at Bushopthorpe dyd gyve in comandement to me that hereafter I shold not in his name make any bounde or obligacion for any legacye and also that I shold not gyve or delyver any obligacion remayning in his graces excheker at Yorke excepte his grace be maid privie to the same or els Mr. Richard Percye his graces commissarie signe and sett his hand to the same in the presence of the right worshipful Mr. Doctor Lougher his graces chauncelor the sayd Mr. Richard Percye his graces commissarye of his sayd Excheker and many mo.' (2)

On the other hand such evidence as has survived of the relation between proctors and clients show that they were friendly, if not cordial. William Fawkes, grandfather of Guy, was given a doe out of the park at Gillinge for his services (3) and a proctor who had written out a court document for his master or client noted at the end of the rough draft ' to the party to pay at the sign of the star upon Saturday morninge 4d for ale.' (4)

(I) Lambeth Lib. Reg. Whitgift f. I02. (I598) (2) ' per me Ed. Fawkys.' Y.P.R. City of York Wills. No. 73 (I574-78) f 9. (3) Bodleian. Bucks. Archd. M.S. d. 4. f 36. (4) ' Miscellaneous Box.' of uncatalogued papers York Diocesan Registry.

THE ADVOCATE.

It is in the nature of things that there should be less trace of the activities of the advocates in the York records than there is of the proctor for example. It was the advocate's business to remain in the background and to tender advice when necessary. Hockaday remarks of his work among the records of Gloucester Consistory Court ' a search through a great number of act books has not produced any record of the conduct of any cause by an advocate.' (I) It would have been most unusual if he had found any such record, as it was the proctor's business to conduct a cause not the advocate's. The only occasion when the advocate came to the fore during a cause was when the judge had to be informed as to matters of fact and law, and as that part of the proceedings was extra judicial no record of it was made in the court books.

The advocate was the patron of the cause, a person of the long robe(2) He had studied the civil law for three years (3) and attested this fact by his oath,, if it were not self evident. This means that during this period he was a graduate of a university with a doctor of law's or a bachelor of law's degree. This last qualification was not an exclusive one, according to Ayliffe a man might become an advocate even if he had not read in a University, provided he had diligently applied himself to the study of the law for the specified time. No one could become an advocate who was under seventeen years of age, a woman, or a clergyman.

(I)' The Consistory Court of the Diocese of Gloucester.' Trans. Bristol and Gloucester Arch. Soc. Vol XLVI. (2) Ayliffe 53. (3) Lindwood 76.

The procedure for the admission of an advocate in 1835 was as follows. The prospective advocate delivered into the office of the Canterbury Vicar General a certificate of his having taken the degree of Doctor of Laws , signed by the registrar of the University which he had attended. A petition praying that he might be admitted was then presented to the Archbishop, who issued his fiat for the admission of the applicant, directed to the Vicar General, who then caused a rescript or commission to be made to the Dean of the Arches, requiring him to admit the candidate as an advocate. On the day appointed for the admission the candidate was presented by two senior advocates to the Dean, who ordered the Archbishop's rescript to be read and the oaths to be administered to the advocate, after which he was admitted. (I)

A similar procedure was apparently followed at York. Here is an early ' Commission to admit an advocate in the court of York.'

' T. etc. to our beloved in Christ the Official of our court, or his commissary general. Greetings etc. Whereas we have graciously admitted the provident and discreet man M. R. B. bachelor of both laws into the number of the advocates of our said Court, we intrust to you, and order you that you receive the said M.R. as advocate of our aforesaid court, according to the laudible custom of this court applied hitherto.' (2)

Some of the York judges, notably John Gibson, Robert Lougher, and John Rokeby, were admitted as advocates in London before coming

(I) Eccles. Crts. Commission.1832 P 28 (P. 13 of original commission.)
(2) Cam. Univ. Lib. M.S. Addit. 3115 F 70.

to York as judges (I) but it is doubtful if they ever practised at York as advocates.

On his admission an advocate was bbliged to take an oath that he would behave himself as a faithful patron of the cause without taking away or delaying justice to either of the parties in all causes which he undertook and that he would defend his clients causes according to the laws and supportthe them with proper arguments. (2) According to the York Provinciale the advocate at York was also obliged to take an oath ' that he will not promote a sause that is unjust to his certain knowledge, nor make use of untrue statements and evidence to the overthrowing of justice or the turning aside of just judgement.' (3)

The advocate was chiefly prominent, as has been already said, at informations in law ; the great difference between his office and that of the proctor lay in that his duty was ' to speak to the merits of the cause after the proctor has prepared and instructed the same for a hearing before the judge.' (4) Ayliffe distinguishes between the person,who pleads the cause, the proctor, and the advocate, ' who is only called thereunto for his advice and counsel.' (5) The business of an advocate lay in giving ' safe and wholesome advice .' This advice might be tendered to the client before a cause began, to the proctor conducting the cause (this would be chiefly concerned with legal arguments, as the proctor knnw at least as much about procedure as the advocate) and advice or information to the judge on the day for him

(I) Lambeth Reg. Matt. Parker F 64. ; B.M. M.S.S. Room Addit. M.S. 24470. for Robt. Lougher see Stowe 570/ I27. (2) Ayliffe 57. (3) York Provinciale Bk. I. Tit. 7. (4) Ayliffe 53. (5) Idem.

to be informed about matters of fact and law.

Like the proctor the advocate might practise in all the courts or confine himself to one or two of them , perhaps ' specializing ' if one can use the word at such an early date, in probate, or divorce. Whitgift, writing to the Archbishop for a contribution for the Irish wars, requests him to make a schedule ' wherein is to be sett down the several names of the advocates and proctors who do practise in anie or every of them.' (I)

The office of the advocate was of a public nature and he could plead for anyone, provided they had not committed an atrocious offence or his pleading was not against the interests of the commonwealth. (2) He was also obliged to give his help gratis to persons suing ' in forma pauperis ' if the judge ordered him to do so. (3) on pain of being deprived of his office. He might also be obliged by the judge to act for a poor person and take a competent salary. (4) Unlike a proctor he might be compelled to act for someone against his will. (5) He might not use foul language in court ' beyond the necessity of the cause.' (6)

Though the pleadings of the advocates before the judges were extra judicial, and have consequently not been recorded in the court books it is possible to obtain some idea of an advocate's pleading in the following account of the deliberation of the High Commission upon the validity of the Dean of Durham's orders.

'.... the L. Archb. the L. President and the rest, consyderinge

(I) Reg. Whitgift. FI02. Lambeth. (2) Ayliffe 53. (3) Idem (4) Idem (5) Idem. (6) Idem.

they had to proceede summarie et de plano absque strepitu et figura iudicii, sola rei veritate inspecta etc. at the request of the D. of Durham, Lycenced Mr. Palar for the temporall lawe and Mr. Fawx and Mr. Hudson for the ecclesiastical lawe to speak and pleade as lawe would permitt... the deanes lawyers speakinge of and concerninge his ministerie ... and other lawyers also against him, as Mr. Burnand for ye temporall lawe, and Dr. Percy and Mr. Thwinge for thecclesiastical law on both sydes probably bringinge many reasons and authoms for themselves.' (I)

The advocate was prohibited from making an agreement ' ratione palmarii ' that is to ensure his salary in advance, but if he did not receive it he might sue for it, without however announcing in open court how much the salary was . (2) The ' York Office Book ' contains notes of fees to be paid at the beginning of the sixteenth century; they cannoh therefore be assumed to be the fees paid during Elizabeth's reign. It is interesting to note however that the salary of an advocate is noted as being six shillings a term, only a shilling more than that of a proctor.(3)

The rules for the precedency of advocates were laid down in the agreement between the officers of the court and the citizens of York.

'.... the aforenamed Lord Archbishop hath ordayned, determyned and decreed that the advocates of his Courte of Yorke which are prebendaries in his Cathedrall Church of Yorke shall give place and preheminence to the Maior of the Cittie of Yorke for the tyme beinge, but of the reste

(I) B. M. M. S. S. Room Addit. M. S. 33207. (2) Ayliffe 55 and 56. (3) 'York Office Book.' I530-43.

of the Cittizens yea Aldermen which have bene Maiors of the said Cittye they shall take place and precedencye. Also he hath ordayned, determined and decreed that the advocates of the said Courte of Yorke being doctors of thone or thother lawes and not Prebendaryes shall equallye Associate with the elder Aldermen which have bene Maiors in this Manner, when many Advocates beinge doctors shall associate himselfe with the elder Alderman and the younger doctor with the younger Alderman.

Alsoe he hath ordayned determined and decreed that the Advocates of the said Courte not beinge Prebendaryes nor doctors shall give place to the Alsermen which have bene Maiors but to other Aldermen which do expect the Maiorallitie they shall Associate together, and if manye meet with manye the Elder with the Elder and the younger together in the Manner aforesaide but such Advocates shall take place of all other Cittizens, yea, the Sherrifs of Yorke for the tyme being. ' (I)

There is no doubt that an advocate could make a good living at York. Quite apart from the fact that the advocate might expect to be promoted to be judge, there was much business at York and the more talented advocates were in great demand. Sandes wrote in a letter to his friend Shrewsbury -

' I chose but one advocate for the office and left all the others unto him, and when he praied that he might have him whom I had chosed I also yelded therunto and tooke only one of those whom he had refused.'(2)

Thomas Crashaw is a typical advocate of the period, successful and

(I) B.M. M.S.S. Room Addit. M.S. 33595. (2) Lambeth Lib. Cod. Tenison 698.

well to do. He mentions in his will (I) that he has already provided for his relatives and friends to the best of his ability, indeed beyond it, and he then proceeds to leave his possessions to his wife. They amounted to a messuage and tenement in Woodhouse, with arable ground, meadows, pastures, common profits and heridaments belonging to it, a garden in Jewberry, mortgages, household stuff, and books and chattels. (2)

The York advocates were not the only ones who pleaded in the York courts. Westmoreland remarks in a letter that the Archbishop ' hath given me very shorte days of answering in which tyme I cannot possibly bring downe my Councell.' Another letter concerning the Westmoreland cause described Westmoreland's counsel ' He (is) .. not altogether destitute of the help of lawyers for the deane of the Arches hath already ben here being retayned of hym and doth intende to come agayne againste the next sittinge which shalbe the I4th at Yorke, at which tyme I thynke we shall shortly growe at an ende. ' (3)

These lawyers may of course have been retained purely in an advisory capacity.

JUDGES.

A judge, according to Law ' is a person who either by his own proper jurisdiction or else by a delegate authority committed to him, has the

(I) York Probate Registry. Vol. 37 F 280. (2) Idem. (3) S.P.D. Vol. XIX 53 20th September I56I.

right of taking cognizance in such causes as are litigated before him in judgement.' (I) There were two kinds of judges, an ordinary judge the ' ordinary ' of the Elizabethans , who was someone who had his power by virtue of his own proper jurisdiction (2) and a delegated judge who had it by virtue of a delegated jurisdiction. (3)

The jurisdiction of a judge might depend on the grant of such persons as had power to appoint judges by law such as princes and sovereign magistrates or on custom, which had the power of delegating a judge in cases of arbitration and the like. (4)

The general qualifications of a good judge are laid down by Ayliffe, he ought above all to have ' a supreme Equity before his Eyes.' (5) He ought to incline to the more humane and equitable part in inflicting punishments, he ought, in theory at least, to be omniscient, since he cannot plead ignorance of the law to excuse a wrong judgement . He ought to be courteous and easy of access yet he ought not to go to the house of a litigant for entertainment for fear of giving umbrage of his partiality. (6)

There were a number of specific rules of canon and statute law as to who could and who could not be a judge. By a constitution of Archbishop Chichele it was enjoined that no married clerk or layman should fill the office of a judge under penalty of incurring ipso facto the greater excommunication. This however was set aside by a statute of reformation times 37 Hen. 8 c. I7. which enacted ' That all and singular

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(I) Laws Forms. Tit. VI. P I2. (2) Law. P. I2. (3) Idem. (4) Idem I3. (5) Ayliffe 3I0. (6) Idem.

persons as well lay as clerics being doctors of the civil law lawfully created and made in any university who shall be appointed to the office of chancellor , vicar general commissary, scribe or registrar may lawfully execute and exercise all manner of jurisdiction commonly called ecclesiastical jurisdiction and all censures and coercions appertaining or in any wise belonging to the same albeit such person or persons be lay married or unmarried , so that they be doctors of the civil law as is aforesaid, any law, constitution or ordinance to the contrary notwithstanding.' Hitherto most court officials, even notaries public, had been in orders. Peter Effard for example, a notary public who wrote a treatise on the York courts at the end of the fifteenth century, was a cleric.

The statute mentioned above was an affirmative one, and it was later ruled (I) that it did not prohibit such persons as were not doctors of law from having such places . It appears that the statute was interpreted more loosely than the wording seems to allow. Even the qualification of a D. L. degree was regarded as unnecessary and the statute was pronounced as declaratory and affirmative without restriction. (2)

The archbishops were determined to alter this, and in 1571 it was ordered by the canons of the year that every ecclesiastical judge be acquainted with civil and church law, twenty six years of age, a graduate practised in the court, of good report, and either ' in sacro ministerio ' or if not, ' animo toto et ferventa zelo erga religionem feritur.' He was to take the oath of supremacy and subscribe to the articles of rel-

(I) Phillimore ' Ecclesiastical Law.' Vol. II. Chapter IV. (2) Ecclesiastical Courts Commission Report. 1883. Historical Appendix I.

-igion . It will be remembered that not only judges, but advocates, proctors, and scribes took the oath of supremacy. The judge was not to pronounce sentence of excommunication himself but was to refer that duty to the Bishop, who was to discharge such duty himself or give a commission ' grave alicui viro in sacro ministerio constituto.' (I)

It is a sad reflection on the church appointments of the age that one of the persons to break the rulings of this canon most conspicuously was Archbishop Sandes . Indeed the canon does not seem to have had any authority. So far as can be judged from the evidence of the court books regarding the persons present during excommunication the judge, Archbishop, Bishop, cleric or layman always pronounced excommunication himself without referring himself to anyone.

It would be too much to say that those particular qualities which are specified in the canons of I57I could not be found anywhere in the Elizabethan church, but they were not likely to occur in the same person. The canons of I604 accordingly were content to look for a lesser qualification in an ecclesiastical judge. He would be considered suitable if he were twenty six, learned in the civil and ecclesiastical law, at least an M. A. or B.L. well affected to religion, with nothing known against his life or manners, and if he were prepared to take the oath of the King's supremacy and subscribe to the Thirty Nine Articles. (2)

In view of the difficulty of securing properly qualified persons , the fact that until the ruling of James I's time it was legally

(I) Ecclesiastical Courts Commission Report I883 . Historical App. I.
(2) Canons of I604. CXXVII.

permissable to buy and sell chancellor's and official's offices (I) thus encouraging venality , it is remarkable that the York judges should have included so many respectable, and indeed eminent persons.

At first sight it might seem possible that even the surrogates in the courts could be people of learning, as there were a good number of prebendaries and beneficed men in the diocese with the degrees of Bachelor of Law or Doctor of Law, but many of them lived far from York, many like William Wilkinson , D.L. must have gone down in the Archbishop's returns as ' not abiding here.' (2) With these facts in mind it is not difficult to see why the number of commissioned judges, as distinct from the surrogates, should have been drawn from such a small collection of people.

Commissioned judges , and many of the substitutes usually possessed a law degree. John Rokeby, Robert Lougher, John Bennet, and John Gibson, who were all Vicar Generals, possessed the degree of Doctor of Law. (3) Richard Percy, also a Vicar General, was also a doctor of law .(4) Edmund Bunny, who was given the office of vicar general within the deanery of Holdernes (5) was an S.T.B and B.D. but was deeply interested in canon law, and wrote on divorce. He later toured England as a preacher . (6) William Palmer, the chancellor, was a fellow of Pembroke, and a ' lerned preacher and honest.' (6)

Those judges who were clerics were either prebendaries or had good benefices. (7)

(I) 8. Jac. I. in Dr. Trevor's case. Quoted by Phillimore Vol. II. Chap. IV. (2) Lambeth Lib. Chart. Misc. Tom I2. (3) Exchequ. Crt. Bk. I570-2. F.3. AB I6 F I. ; AB 52 F 5I2. (4) AB 52 F 23. (5) Young. & Grindals Act B. F I4I. D.N. B. (6) Lambeth Lib. Chart. Misc. Tom I2. (7) See Browne Willis' ' Survey of the English Cathedrals.'

Apart from the emoluments which they received through their preferments which were often attached to or associated with their official positions, for example the precentor's office seems to have been a perquisite of the Vicar General, the judges drew fees for the various acts over which they presided and had a salary attached to their offices.

William Ingram's will throws some light on the salaries of judges at York. He shared an official position with Henry Swinburne, probably the Officialty of the Consistory. This office ran for the term of two lives, and Ingram provides in his will that the share of the profits which he would have drawn if alive shall go to his wife and son, being paid by Swinburne ' of whose honest dealinge with them I maike noe doubt.' (I)

A table of some of the judge's fees at York according to the agreement of I57I have been preserved by Consett (2) these are noticeably lower than the corresponding fees at London, as allowed by Whitgift (3) The fee due to the judge at York for an administration was 2/I0d ; at London it was I0/- ; a tuition at York cost 6/-, at London it cost 6/8d. The two tables do not lend themselves to an extensive comparison as only five fees are listed by Conset but it is significant that these two important items should be cheaper at York.

Many of the judges at York also sat at one time or another on the High Commission , or were attached to the Council of the North as was John Bennet, for example. (4)

The typical ecclesiastical judge at York seems to have been a

(I) York Probate Registry. Vol 39. P 50I. (2) Conset P. 4I5. (3) In Ayliffe P. 55I. (4) S.P.D. Vol. CCLXXI. June I599.

a man of good family, who had either proceeded to a University and taken a law degree or had studied law privately. He had usually been admitted as advocate in London, and had practised there before being appointed to some office at York. George Palmes, a Vicar General of the period immediately preceding this one, belonged to a famous Yorkshire family. Edmund Bunny was the son of Richard Bunny of Bunny Hall, a treasurer of Berwick (I) John Bennet was the son of a knight (2) Henry Swinburne came of a respectable if not ancient family(3). John Rokeby was the noble representative of a very old Yorkshire family. The judges seem to have divided themselves between the two Universities of the time. Thus Bennet was a student of Christ Church, Oxford, where he took his B. L. and D.L. by accumulation (4) William Palmer was a fellow of Pembroke at Cambridge, (5) Swinburne went to Oxford (6) and Rokeby to Cambridge.(7)

Many of the judges who were in orders seem to have owed their position to their early employment as chaplains either by the Archbishops or to a Vicar General. Thus Anthony Iveson had been Rokeby's chaplain before he became a judge (8) Edmund Bunny was chaplain to Grindal (9) William Palmer had been Sandes' proctor at his confirmation as Bishop of London (IO) which suggests that he was either his chaplain or had some early connection with him.

Before closing this account of the judges at York it would be as well to say something about the surrogates and substitutes.

These gentlemen did a very great deal of work at York. In the Dean

(I) D.N.B. (2) Idem. (3) Idem. (4) Idem. (5) Idem. (6) Idem. (7) Idem. (8) B.M. M.S.S. Room Addit. M.S. 24470. (9) D.N. B. (IO) Lambeth Lib. Reg. Matt. Parker. F I30.

and Chapter Court for instance, between 20th January 1581 and 22nd September 1581 the Auditor only attended 3 out of a possible 26 court sittings. Of the remainder 7 were held by Ralph Coulton, 5 by William Palmer, 10 by John Hunter, and 1 by Robert Lougher, who were his substitutes.(1)

Although most of the judges began their duties as substitutes , as did Henry Swinburne , a number of the substitutes never attain to the rank of judge, and probably never intended to, their presence in the court being due to a desire to help out the straightened staff of lawyers at York.

It is worth noticing the standing of the persons who acted as substitutes or surrogates ; William Barton (2) was a vicar choral and possibly a relative of the Edward Barton who was Elizabeth's ambassador to Turkey. Robert Burlande, another substitute (3) was the Dean of Christianty of York, and succentor of the Vicars Choral.(4) Robert Calverde is described as ' cleric ' (5) Thomas Corney was another vicar choral (6) Robert Colnard was described simply as ' cleric'.(7)Hugo Hookes was also noted as being a ' cleric '. (8) John Hunter was a succentor of the vicars choral (9) William Palmer, the chancellor, was a frequent substitute (10) John Rychardson, another substitute (11) was a vicar choral. George Slater S.T.P., was prebendary of Barnebie and residentiary canon. (12) Other substitutes were Edward Swayne (13) and John Baytman. (14)

It is not surprising to find that a number of the vicars choral (poobably their number could be substantially increased by a complete survey

(1) RAS 59. (2) AB 52/504. (3) AB 27 & Exchcq. 1570-2. F 104. (4) Ex. 1570-2/106. (5) AB 52 /504. (6) AB 52/ 53. (7) RAS 60. (8) AB 52/ 504. (9) AB 52/38. (10) AB 52/61. (11) AB 52/53. (12) AB 52/38. (13) Exchcq. 1570-72/104. (14) RVIIA 40/3.

of the court books) elected to act as substitutes for although they were given to hanging about at street corners and ' evell companye and unlawefull games ', thereby giving ' occasion of offence .' (I) they could usually be relied upon to share the hard work of administration.

Advocates were frequently substituted in the courts , a system which probably had advantages over the common law practice whereby the functions of judge and pleader tended to be separate . Not only did it foster the growth of judicial qualities in the advocate, who might, if sufficiently talented, look forward to the post of judge, but it must have helped him in putting forward matters of fact and law before the judge on the day for him to be informed about matters of fact and law. (2)

A letter of Grindal to Burghley illustrates rather well the approach of an ecclesiastical judge to any cause he might have to decide upon. The question at issue was an advowson which had been granted by Grindal's predecessor to one Webster , who was possibly a man of talent in his profession, that of master cook, but was felt by Grindal to be unsuitable as a prebendary. (3) Grindal summed up his view of the cause, which was brought before him, as follows . First he considered the policy of the question. ' sithence I was called to the office of a bishop and long before I never liked the granting out of advowsons ... so as Mr. Webster's case, being both against a reasonable and a good law, and having a corrupt original, both in my predecessor and himself, is a cause odious and deserveth no favour before any judge .' This illustrates the wide measure of personal choice accorded by custom and law to the judge

(I) Grindal's Injunctions of 1571. In Young and Grindal Register F 152.
(2) See AB 27 generally. (3) Strype's ' Life and Acts of Archbishop Grindal.'

He next considers the law of the question, and , as in many ecclesiastical causes, consults the common law as well as the ecclesiastical law.

'.... no injury (is) done to Mr. Webster, for if a man may trust either spiritual or temporal lawyers in these parts that I have talked withal.... Woodruff's presentation is good in law.' He then considers the custom of the locality ' the custom of York.' ' Besides the common practice used here in like cases...' Last, but not last in importance, is the question of the equity of the cause, ' fair dealing ' as it might be called. ' And as for equity , it is all on my side, both for nominating the best, and for other causes before alleged. Thus much for Mr. Webster's title.' (I)

The best picture of a good ecclesiastical judge of the day is that given by Ralph Rokeby . He shows us what may be described as a picture of the ideal ecclesiastical judge of the period, down to his mannerisms his use of the phrase ' By the Mantrin ! ' and (to a prevaricating advocate perhaps - ' I will be plain with you sir ! ' (2)

The author of the article on John Rokeby in the Dictionay of National Biography gives a good short account of him ; of how he went to Cambridge, where he took his degrees as bachelor and doctor of law, how he was admitted a member of Doctor's Commons, practised in the Court of Arches, and eventually obtained a post at York through the favour of Henry VIII, where he held various good preferments till his death, and how he acted as a member of the King's Council in the North and as a commissioner to reform the law of the marches. (3)

(I) Parker Soc. ' Grindal's Remains ' Letter LXVIII. (2) ' Oeconomia Rokebeanum!(Addit. M. S. 24470 B.M.) (3) D.N.B.

It is important to recognise , which the author of the article does not seem to do, that Rokeby was an exceptional person. He cannot therefore be taken as being typical . He was, as John Ferne says of him ' one of the most learned canonists of his time.' (I) The account given by his nephew is shortly as follows.

' The second of thes brothers was John Rokeby... a worthy priest and Doctor of the Civil and Canon Laws, and (of) so excellent and profound skill and learning that the parts beyond the seas, Arches and London and the Exchequer Court at York do yet resound and him shall praise in that knowledge. Yea it was in him for law and a very Plato for Philosophy, Ipse dixit. In the course of two and thirty years he supplied the judicial place at York he never had sentence annulled by appeal but only one and that was given by a chaplain of his called Sir Anthony Iveson in his master's absence. He was also from his childhood given to chastity and shamefacednes, contempt of riches, liberality, integrity and hospitality..... For Contempt of honour and riches he had so confirmed King Henry VIII his divorce from his brother Prince Arthur's wife and so confounded by the Canon Law the Pope's absolute power ... that the King, as I have heard, offered him the bishopric of London but he refused, and chose rather a competent living in the Church at York with thes words. ' Nay I pray your Grace give me rather som poor living in my native country far from your face.' And now whether his desires were modest or not I leave to your and all mens' consideration..... For his

(I) John Ferne to Michael Hickes . S.P.D. I2. Vol CCLXXI. June 4th I599.

liberality and hospitality all his friends and many strangers continually tasted, ... so also did a great number of poor people at York and Durham, and although his table was open to all, yet when any of his friends especially who had suits upon him they were barred to dine or sup with him. If any letter was sent to him concerning any matter depending judicially upon him they were openly read by the notary in the face of the court..... Finally he lived a great learned man and a good counsellor to his praise, and died in honourable grey hairs.' (I)

Such in short were the officers of the courts. It may be helpful for the reader to picture how a litigant was concerned with each of them in turn.

First of all a cautious prospective litigant would consult his advocate, and possibly obtain from him a written opinion on the cause he had in mind , a rather later example of one of these exists at York. (2) If he made up his mind to go to law he would proceed to the office of James Stocke in Petergate (3) where he would probably find that Mr. Stocke was too busy to entertain any clients for some weeks, in which case he would probably seek out Edward Fawcett further along the street (4) He would then constitute Fawcett , while John Farley , one of the proctors who practised in the Dean and Chapter (5) would witness the constitution and make a note of it for insertion in the court book. The bargain would probably be then wetted in the ' Sterre ,' which adjoined conveniently on the close . Fawcett would then proceed to engage an advocate , and hold a consultation with him about the legal merits of

(I) B.M. M.S.S. Room M.S. Addit. 24470. (2) Bound with IO.L. I8. in D. & C. Lib. York. (3) Exchcq. Crt. Bk. I570-2. (4) AB 52/ I23. (5) RAS 59 F.9.

the cause . The proctor would then arrange for the cause to be brought forward in court as soon as possible. A citation would be decreed for the opposite party in the cause, and an apparitor would be sent out to deliver it. When he appeared the cause would begin, Mr. Fawcett would put his client's cause forward, draw all the necessary documents in the cause, and perhaps ensure that his more important arguments were entered in the court book by the actuary along with the other acts. Mean while the advocate would be at hand to give advice. Eventually the day for the judge to be informed on matters of fact and law would arrive where upon the advocate would set out the legal points arising in the cause to the judge , who would deliberate and finally give sentence. The registrar would then receive his fees, and the winning party would be given letters testimonial . He would then fee his advocate, pay his proctor's fees and give him a gratuity and take his departure.

CHAPTER FOUR. GENERAL PROCEDURE.

It would be as well to say something here about the sources for this chapter. The greatest difficulty for any student of the York courts during the reign of Elizabeth has hitherto lain in the fact that there was no contemporary or near contemporary account of procedure extant , nor were there any known precedent books for a period earlier than the seventeenth century, with the exception of the ' Kalendarium de formis litt-

-erarum cursorarium,' contained in the Register of Archbishop John le Romeyn (I) which, as its title suggests is more of a letter book than a precedent book, and is besides of too early a date to be used with much effect as a source for the Elizabethan period.

Nor are the printed sources particularly helpful. There are it is true two monographs by Henry Swinburne , advocate and later judge at York at the end of the sixteenth century, but these deal with betrothals and testaments not with general procedure . (2) The classic authors of treatises on ecclesiastical procedure Clerke, Conset, Law, and Oughton, were all primarily concerned with the centre of the ecclesiastical legal firmament, the Court of Arches. Conset does make valuable references to York ; for he practised there and dated his great work from York. It must be repeated however that neither he nor any other author give any sort of separate procedural account of the York courts regarding general procedure. Francis Clerke is much nearer to this period than any of the other writers mentioned. He is earlier than Swinburne, and he finished his work on procedure ( ) in 1596. Clerke however, much more than Conset or Swinburne is an author bound down by the forms of the courts. He himself says quite frankly in his preface that he does not lay claim to any great knowledge of the canon law, but has a thorough working knowledge of the practice of the courts. As his observation was confined to the Court of Arches and the other London courts he could not have known much or have been very interested

(I) Surtees Soc. 1916. P. 179. (2) H. Swinburn ' A Treatise of Spousals.' ' A Treatise of Testaments.' (3) [illegible].

in practice at York. As the Ecclesiastical Commission Report of 1883 says

' The forms and historical development of the courts of the province of York vary considerably from those at Canterbury.' (1)

Nothing is more usual in the history of the ecclesiastical courts than for a court to build up for itself a collection of individual forms of procedure, special wordings of documents and applications of local custom. Even today these idiosyncrasies have not completely dissappeared and an new Chancellor may be told by his registrar ' We do things differently in this diocese.' In order to obtain some idea of how far these differences prevailed in Elizabethan times it is only necessary to look at the York custom of ' legitim ' or ' bairnes portion ' which is described by Swinburne as being law in the diocese of York and in some of the southern dioceses, but which was unknown elsewhere (2) and then to consider the difference in the forms of the letters significatory which emanated from various ordinaries in the one province of York. (3)

It was accordingly felt by the present writer that it might be unsafe to apply to Clerke for the answer to questions arishing affecting the courts of York, as in doing so he might reproduce peculiarities of the southern courts, and neglect those individual differences which may have existed at York.

There was really nothing to supply this deficiency on the part of standard authors. It is true that there exists in the York Diocesan

(1) Ecclesiastical Courts Commission Report 1883. Hist. App. I. P. 31.
(2) See Chapter VII. (3) P.R.O. C. 85.

Registry a considerable collection of cause papers , as distinct from court books. From these precedents might have been culled, but there were practical difficulties in making use of them. Not only are many of them un-indexed and unreferenced, but they are , so far as can be seen very incomplete for the reign of Elizabeth. Though very rich in libels, replications and the like documents there were not , as far as could be gathered from the Pilgrim Trust Registrar, any citations of Elizabethan date. It would of course have been possible to go through them and collect examples of different forms, but it would have been difficult to say whether any of these documents approximated to the normal type of form issued for any particular occasion. For instance the certificates of a commission varied from very formal documents to what was practically a garrulous letter to the ordinary. (I)

It would then have been difficult to say whether any documents were standard forms or not, while the court books, though quite invaluable as a source for procedure , are written in a very abbreviated style,

(I) A good example of this is the certificate made ' To the right worschipfulle and his very good master Mr. Doctor Rookeby chauncellor of Yorke ' in the year 1584 ' fourteen yere paste and gone after the great insurrection in the North.' by a parish priest signing himself, ' Your bounden Beademan Launcelot Thorneton, Prest; it is no exaggeration to say that Thorneton writes much as he would to a friend. After explaining that he has no seal and no notary public in attendance as he is ' onelie deputie for a tyme at request,' and explaining how he has supplied these two great wants, he wishes that ' the lorde preserve your gode masterchip with moche worship and long lyf at Northalertanne.' He adds the main business of the certificate in a sort of postscript. ' And also the said Robert Fairechild and bothe the women performed and fulfilled the premisses in all things accordinge to the iniunctions sent to me in that behalfe.'(RAS 20 B.

which by the time of Elizabeth has become shortened, not to say cryptic . They are accordingly, not very useful as sources for precedents . In any case any account of procedure at York compiled from cause papers and court books alone would have been of doubtful value unless accompanied by a contemporary or near contemporary treatise on procedure of some sort.

These difficulties have been partly overcome by the discovery of two precedent books for the York courts, one contemporary with this period, the other for the period immediately preceding it. Some account of them will be necessary in order to understand how they fit into the frame of this examination of procedure.

The first of them to be found was the ' York Precedent Book ' in the Bodleian. (I) On the front cover is written, in a hand of about 1600, ' Presidents . Jo. Martiall.' John Martiall acted as scribe of the acts in the Audience or Chancery Court in the '70's and also probably practised as a proctor at York.(2)Later he practised as a proctor in the Archdeacon of Nottingham's court. (3) This precedent book was among the Buckingham Archdeaconry papers which were transferred to the Bodleian from the Archidiaconal Registry at Aylesbury in 1914. It was catalogued and foliated by a gentleman whose interests were mainly topographical and so far as is known the present writer was the first student of the ecclesiastical courts to examine it. * It seems likely that it was both compiled and in the main written by John Martiall though there are insertions in what seems to be another hand. No doubt he wrote it for

(I) Bodleian Bucks. Archd. M.S. d. 4. (2) ' Chancery ' Crt. Bk.1575-9. (3) R.F.B. Hodgkinson ' Extracts from the Act Books of the Archdeacons of Nottingham,' Thoroton Soc. Vol. XXIX. 1925. P. 179. * Miss Barratt, Assistant in the Bodleian, kindly drew the writer's attention to it.

his own use. It contains a great number of forms, both for documents in the Exchequer and in the other courts. Indeed it is not too much to say that some of the York forms for this period could certainly be found nowhere else. It consists of 103 folios, though there were probably more at one time and includes, besides the Elizabethan forms, precedents for the reigns of Mary, Edward VI , and Henry VIII ; there are also a few pre-reformation documents.

The other precedent book, which has also so far as the present writer is aware, remained unknown to students of the York courts is M.S. Addit. 3115 in the Cambridge University Library. It has been obligingly dated for me by the Cambridge authorities as ' late fifteenth century.' On folio 407 there is the following note - ' Iste liber pertinet Petro Effard clerico notario publico.' It was probably compiled by and written in part by him, as here too there is evidence of different hands. A later owner was Sir John Monson, Kt. who gave it to William Pownhall of Lincoln in 1725. There is a note on folio 409 which states ' This Book contains ye form of all proceedings in matters ecclesiastical in ye Court of York.' This is in the main a fair estimate of its worth, and it was probably placed there by some York official of the time, as various commissions to the Official occurring in the book have been noted down on the same page, intimating that they were still of value as precedents at that late date. It is written on paper in a very good hand of the day and much work has been put into the capitals with which it is decorated.

Altogether there seems to be a more scholarly approach here than in Martiall's compiliation ; the documents are more easily divisible into the classes to which they belong, and a compendious index has been begun, though not completed . At the same time there is much dead wood for the purposes of the sixteenth century student in the number of documents relating to papal and monastic matters and it loses some of its interest in the frequent pruning out of some of the names of people mentioned in the orginial forms from which it was transcribed.

This is fully made up for by the inclusion of an unhoped for treasure, a treatise on procedure in the York courts written by an official engaged in them. Like many later treatises it is written primarily for the instruction of the proctor and there are many references to what the ' cautious proctor ' should do. If its date be put at 1475-1500 it will be seen that it is nearer to the time of Elizabeth than any other description of procedure written by anyone who had knowledge of the York courts.

As it is from these two precedent books that the account of procedure in this chapter is largely drawn and illustrated the question arises of how far they are applicable to the period 1558- 1603. The oldest of the two, Peter Effard's book, was written from sixty to eighty five years before this period commences. During this time there were differences in procedure in the courts, but they were differences which chiefly affected particular aspects of procedure, such as appeal, as the

Ecclesiastical Courts Commission Report of 1883 points out .(1)

' Nothing is more striking ' says Francis Fincham ' than the fact that ins spite of the portentous religious changes of the sixteenth century which are reflected not only in wills, but in every other description of contemporary records, the procedure of these courts went on practically unchanged down to the passing of the Act of 1857, which relieved the Ecclesiastical Courts of their matrimonial and testamentary jurisdiction.' (2)

Such developments as occurred between the time of Peter Effard's book and the time of Elizabeth, notably the lessening of the use of suspension and aggravation against a contumacious and excommunicate person will be dealt with as they arise. On the whole it can be said that Effard's treatise is very pertinent for procedure during the reign of Elizabeth.

John Martiall's book is in a very different case . It was written some time in the late sixteenth century, as Elizabethan precedents are to be found in the middle of the work. It was written too, by someone intimately connected with the work of the courts of the time, whose handwriting can be found in the court books. Now it is obvious that no one who was making a collection of documents used in the courts would wish to include forms of purely antiquarian interest. The forms included in such a collection would be such as were in use at the time of writing or had been made use of until a comparatively short time ago. Thus although Martiall includes in his book forms which are hanging in the bal-

(1) Ecclesiastical Courts Commission Report 1883. Hist. Appendix I.
(2)Notes from the Ecclesiastical Court Records at Somerset House. Francis Fincham. T.R.H.S. Fourth series Vol. IV.

-ance such as those concerned with suspension and aggravation, there are no dispensations or any of the many documents connected with the Roman Curia, which are so often encountered in the Cambridge Precedent Book ; Martiall knew that they had gone for good. It follows then that even a comparatively early precedent such as that for the reign of Henry VIII must be considered as valid for this time . A good compiler would wish to have the oldest and best forms which were still applicable to the procedure of the time , and it was for this reason that both Effard and Martiall put into their compilations documents which were earlier than the date at which they wrote . Of course the greatest argument for the applicability of the majority of the forms in both these precedent books is that they should have both remained in the hands of persons connected with the courts who apparently made use of them, Martiall's being carried off by its compiler, apparently , to the south of the province, and Effard's being still, by the seventeenth century, in the hands of a person who was apparently concerned about the powers of the Official.

So much for the actual procedure involved . That did not change greatly. The forms of the documents themselves might be expected to have changed, but here again the change was not very great. As Dr. Purvis has said in ' A Medieval Act Book ' in the York records ' We find a well established range of conventional forms, displaying remarkably little variation over four centuries ; even the phraseology shows no great development of anything new during the major part of

that time.' Most of the phrases used in Effard's forms are still in use by the time of Elizabeth. If the forms have changed it is chiefly because phrases have dropped out rather than been replaced by others. In addition the forms given by Effard's book possess an added value in that they represent what is probably the fullest form of court documents which were later used in the Elizabethan courts, it is therefore possible to get a much better view of procedure by examining the earlier documents and comparing them with the more modern ones than it would be by an examination of purely Elizabethan forms. It is with this consideration in mind that the earlier forms have been compared with the later ones whenever it seemed practicable. Only when no other forms are available to illustrate a particular point of procedure however are the Cambridge forms given unnaccompanied or without comparison.

It should be pointed out that it is usually possible to find out from the Elizabethan court books whether procedure, or to a lesser degree, forms, had developed or declined since Effard's day.

Conset, being the authority most informed about practice in York, has been used as a printed source, whenever possible.

It was usual in the past for anyone describing court proceedings to begin with the ' precognita ' the things which required to be known before that account could be understood. Most of these have been dealt with in previous chapters and it only remains to refer to the classification of causes as being either causes of instance or causes of

office. Causes of instance were causes between party and party, causes of office might be either instituted by the mere office of the judge, or by the office of the judge promoted by some person. The cause was either described , if it were a cause of office as ' the office of the judge against A.B. ' or ' the office of the judge promoted by C.D. against A.B.' (I) Causes of instance were described in the court books as ' A. against B. in a cause of tithes.' At York another kind of office seems to have existed , that of ' necessary ' or ' mixed office ' where the judge assigned a proctor to promote the office . (2)

THE CONDITION OF THE PLAINTIFF.

It was not everyone who could sue in the ecclesiastical courts in his own person. Special provision had to be made for minors and paupers, and excommunicated persons could not enter the courts . (3)

Minors, that is persons under twenty one years of age, were incapacitated from taking part in judgement. ' And these are they who stand in need of Tutors by whose means they may be capacitated to maintain and vindicate their own Right.' (4) If a legacy was left to a child of seven and was disputed for example so that a cause was necessary then his father or next of kin asked the judge to assign to him a curator or curators. Usually the father and one or more of the proctors of the court were appointed . (5) These curators carried on the suit for the minor and were condemned in expenses if they lost the cause. The fact that a

(I) Law. Appendix. II. (2) See Page 56. (3) Conset Part II Chap. II. Sect. I.
(4) Conset Part II. Chap. II. Sect. I. (5) Idem.

cause was being carried on by a curator had to be indicated in the libel. (I) Here is an example of the admission of a curator.

' On which day hours and place the said Twiselton appeared personally and alleged that the said Christopher, John and Anne Twiselton were children of the said deceased and that they were and are of minor age, and do not have the standing to prosecute this cause. Wherefore he petitioned that he be admitted as tutor or curator. And then the judge so admitted him.' (2) Here at any rate no other curator was assigned, as Conset suggests was usually done.

A poor person was obliged to sue in ' forma pauperis ' that is as a pauper, whether he was defendant or plaintiff, as a defendant was not obliged to contest suit with anyone until he knew how he might have his expenses from him should he win. (3) Either party might be admitted as a pauper at any stage of the proceedings, thus Browne in the cause of Spender c. Browne did not petition to be admitted ' in forma pauperis ' until the fifth hearing. (4)

In order to be admitted ' in forma pauperis ' a litigant appeared and alleged himself to be worth only five pounds when his debts had been taken into consideration, and offerred to take his oath upon this . This property qualification may have been lower at York than it was in the Arches. The party mentioned above petitioned in this form.

' On which day hours and place the said Browne having been summoned appeared personally and offerred himself as ready to take an oath

(I)Conset Part II Chap. II Sect. I. (2) Consistory Crt. Bk. I586-87 F 29. (3) Conset Part II Chap. II. Sect. I. (4) RAS 60 (D.& C. Crt. Bk.) Spender c. Browne . beginning F I30.

that he was not worth forty shillings in his goods when his debts had been deducted, wherefore he petitioned that he be admitted ' in forma pauperis.' (I)

This suggests that the property qualification at York was not five pounds but forty shillings, as it was in the inferior courts of the city of London. (2) The oath which the litigant took was known as the 'juramentum paupertatis ' at York. (3) When he had taken the oath the party would be admitted as a pauper and a proctor and an advocate would be assigned to him. (4) They were expected to give their services free, without hope of reward. Wolsey's York Provinciale , the collection of canons which he had ordered to be prepared for his province, emphasises this regulation with regard to the poor clergy suing in this way.

' The ordinaries of places shall admit ' in forma pauperis ' vicars who declare on their oath before them they are weighed down by poverty who are prosecuting a case for such augmentation in any of their courts ; performing their own office in this respect without charge and freely, procuring moreover that the defence and record shall be without cost and freely made and given by advocates, proctors, and other officials and keepers of records in their consistory courts.' (5)

According to Conset the party so admitted might be forced by his adversary to take an oath that he would pay the expenses of the suit should he lose it if his condition in life ever improved. This does not

(I) RAS 60 F 133. (2) Oughton P. 64. (3) RVIIA 29 F 5. (4) RVIIA 29 F 5. for an early example. (5) York Provinciale . Book III Titul. V.

seem to have been done at York.

If anyone felt that a party who was petitiioning to be admitted ' in forma pauperis ' was better provided for than he pretended to be he denied the allegation and petitioned that the party petitioning should not be admitted as a pauper. Here is an example.

' Browne...petitioned to be admitted ' in forma pauperis ' in the presence of Mr. Lindley denying that the allegation made by the said Browne was true and petitioning that he should not be admitted. And then the judge assigned to hear his will upon it in three weeks time, these hours and place. ' (I) When the three weeks had elapsed it appeared that Browne was unwilling to disclose his assets, as there is a memorandum after the record to the following effect.

' Memorandum. That Mr. Doctor Gibson did move the said Browne to put all matters betweene Spender and him to order . Spender was verie willing so to do, Browne utterlie refused, whereupon the Judge refused to admit him in forma pauperis.' (2)

In making an allegation of this sort the proctor would endeavour to prove that the party had more goods than he pretended to ; thus in a cause where his adversary had petitioned to be admitted ' in forma pauperis,' Mr. Stocke alleged that.

' The said Park alias Raynbrown had goods and chattels and household stuff to the value of £I2 or at least £I0 sence the beginning of the suite and that he hath sold or alienated the same summe thro' Smythe Bilynam of

(I) RAS 60 F I33. (2) Idem F I36.

of purpose to seem poor that thereby he might be admitted in forma pauperis.' Mr. Stocke then proceeded to take oath upon the truth of this allegation and petitioned that Park should not be admitted as a pauper. (I)

' An Excommunicate Person is another sort of Person,' says Conset, ' whom the Law allows not the Liberty of standing in Judgement ; If therefore the Defendant do object that the Plaintiff is an Excommunicate Person, and that he has not ' personam standi in Judicio,' nothing ought to be decreed at his Petition.' (2) The excommunication, if alleged, ought to be proved straight away, or at least in eight days time, by exhibiting the letters of excommunication. (3) Conset says that all proceedings done up to this point (the objection) are valid, but those after are null and void ; according to Clerke the defendant, even though excommunicate, might still defend himself. It will be seen that this latter opinion seems to have been held at York too. But in York as elsewhere it was regarded as impossible that an excommunicate person should prosecute a cause in the courts there. In the cause of Underne c. Lowthe, Mr. Broket, Lowth's proctor, alleged as follows.

' Mr. Broket then alleged that the said William Underne cleric was long before the beginning of this cause and still is excommunicate and was excommunicate at the day of the citation and therefore does not have a right to be heard in judgement. ' (4) And at a later stage of the cause Mr. Broket alleged once more that Underne was under a sentence of excommunication before the cause began-

(I)Consistory Crt. Bk. I586-87 F. 5. (2)Conset Part III Chap. V. Sect. 3. (3) Idem. (4) ' Audience ' Crt. Bk. I570-74. F 57.

' In which sentence of excommunication he still contumaciously perseveres, with hardened heart, being by no means absolved, and that on this ground the same William Underne clerio does not have a legitimate right to be heard or to act in this judgement .' Therefore, Mr. Broket went on, Archdeacon Lowth did not need to answer Underne at all. (I)

The defence against this allegation was to except against the insufficiency of the allegation- ' for and as much as it had not been alleged that any sentence of excommunication had been given in writing.' (2) This implies that proof of an excommunication required the exhibition of such a document, as Conset suggests. Broket then produced letters testimonial upon the excommunication issued by Archdeacon Lowth against Underne and signed and sealed by him. (3)

PLENARY CAUSES.

Plenary causes were those causes which were dealt with in accordance with what may be called the ordinary procedure of the ecclesiastical courts ; that is they required , ' a solemn Order in the proceedings, as to the contestation of Suit, a Term assigned to propound and invoke all Acts etc. A Term to conclude, and a due Form of concluding in that Term. etc.' (4)

Summary causes required a different and much shorter procedure and will be dealt with elsewhere. The question of which kinds of causes were to be tried summarily and which in a plenary fashion was a very complicated one, especially, ' and this is specially to be noted that if anyone proceeds in plenary causes summarily, that is without contestation of

(I)' Audience ' Crt. Bk. I570-74. F 69. (2) Idem. (3) Idem. (4) Conset Part I. Chap. IV. Sect. 2.

suit and assignation to propound all acts and to conclude ...it is null, but on the contrary if it was proceeded plenarily in summary causes it stands and is not null. If therefore proctors are in doubt what causes are plenary and which in truth are summary they should proceed plenarily, although the cause is summary, and so avoid all nullification.' (I)

Moreover the same causes might be plenary or summary according to the court they were tried in. Thus all causes in the Delegates Court and the Prerogative Court of Canterbury were summary. (2)

JUDGEMENT.

' In the first place ,' says Peter Effard. ' it must be known that all judgement is concerned with three persons, that is to say the judge, the plaintiff and the defendant.' (3) Judgement was ' that which determines and puts an end to the Cause or Suit.' (4) In addition to the plaintiff defendant, and judge the persons who would be present during the trial of a cause were the advocates and proctors, who assisted the parties, and the assessors, notaries, scribes, actuaries, apparitors, and mandatories. (5)

CONSTITUTION OF A PROCTOR.

' Anyone who wishes to appear by proxy in judgement ' says Peter Effard, ' either plaintiff or defendant , ought to constitute his proctor according to the custom of the Church of York in causes not demanding a special mandate, as in matrimonial causes or divorces, tithes, and ecclesiastical causes and other similar causes in the form written below before the judge

(I) Law M.S. (c. 1720) written apparently by an Arches proctor, in the writers possession - F 4. (3) Cam. Addit. 3115 F 235. (4)Conset Prt.II. Chap. I. Sect. I. (5) Idem. (2) Conset Part I. Chap. IV Sect. 2.

competent in this part or his registrar.' (I) The constitution of a proctor was done by the plaintiff before anything else, though defendants- doubtless of straightened means- sometimes made their first appearance without having constituted a proctor and sometimes without even being represented by one. (2) The most common way of constituting a proctor was probably in the way described by Effard, that is ' apud acta curie ' or ' at the acts of the court, ' which is to say before the registrar in court or else before a notary public and witnesses, although proctors could also be constituted by a proxy and also before a notary public and witnesses. (3) Here is an example of the constitution of a proctor apud acta.

' And then the said Mr. Colson constituted Mr. Fothergill his proctor in all his causes moved or to be moved according to the form of the registry with the power of substitution, and promised about the ratification etc.' (4)

Here is an extra judicial constitution before a notary public and witnesses.

' Twenty second day of February 1580 in the usual dwelling house of Robert Drurie... Alice Drurie, wife of the said Robert, constituted Mr. Broket and Mr. Fothergill her proctors in all her causes moved or to be moved with the power of substitution and promised Mr. Vincent Fawcett about the ratification etc. in the presence of John Whitecars and Christopher Foster, notaries public then and there.' (5) The scribe copied

(I) Cam. Addit. 3115 F 236. (2) As in the cause of John Browne c. Spender in RAS 60 F 130 where Browne conducts his own defence. (3) Conset Part. II. Chap. II Sect. I. (4) RAS 59 F 21. (5) RAS 59 F 6.

this verbal agreement into the court book and this constituted the proxy. An example of this kind of constitution will be given in the following section. There were two more ways in which a proctor might be constituted. He might be constituted before a notary public who thereupon drew up a public instrument and exhibited it in court. There are numerous examples of these instruments in the Cambridge Precedent Book. A typical example describes the constitution with all the usual clauses and concludes. ' The client who was making the constitution requested me the notary public that I make for him one or several instruments about all and singular these things.' (I) Again a proctor might be constituted before two or more witnesses who gave their testimony concerning this constitution. (2)

Proctors were assigned to parties who were acting in the form of a pauper and who could not afford proctors fees, and also assigned against defendants in an office cause. Here is an early example of the assignation of a proctor to a pauper.

' On this day Margaret Hyndsby took the oath of poverty etc, and the judge... admitted her in the form of a pauper and assigned to her Mr. Farcher as advocate * and Mr. William Wryght and all the other proctors of the court as her proctors, and at once the same Margaret constituted Mr. William Wryght as her proctor according to the form of the registry.' (3) Here it would seem that Margaret Hyndsby had a choice out of all the proctors in the court, but had her advocate assigned to her. This seems to have been common practice, as Sandes in a letter to one of

(I) Cam. Addit. 3II5 F 325. (2) Conset Part II Chap. II. Sect. I. (3) RVII A 29 F 5. * Another and early example of an advocate who became a judge, his name is in many of the commissions of the Bodleian Precedent Book.

his patrons makes a point of conferring an uncommon favour on one litigant , who was the patron's friend , by allowing him to choose his own advocate, ' for I chose but one advocate for the office and left all the others unto him. And when he praied that he might have him whom I had Chosed I also yelded therunto and tooke only one of those whome he had refused.' (I)

In causes where parties were proceeded against by the office of the judge proctors had to be assigned to act against them. In the cause of office of the judge against Gascogne , for instance, he was summoned - ' on which day hours and place the judge assigned Mr. John Broket as a proctor in this cause , and then Mr. Broket undertook on himself the burden of the execution of this assignation.' (2) Advocates were also assigned to act against an offender, and the quotation from Sandes' letter given above suggests that perhaps more than one advocate might be retained by the office for this purpose.

PROXIES.

The proxy which the proctor received from his client , or ' master ' as he would have called him was ' a Power or Mandate given to the Proctor by his Client to appear for him, and to do all things for him which he might possibly do if he were personally there himself, with power to substitute another in his stead, so often as he shall be absent upon urgent occasions.'(3)

It was in fact the document by which a client authorised his proctor or proctors to act on his behalf, and also practically committed his wel-

(I) Lambeth Lib. Cod. Tenison 698. (2)'Chancery' Crt. Bk. 1575-79 (AB 27) F 7.
(3)Conset Part II. Chap. II. Sect. I.

-fare to the proctor and bound himself to ratify whatever his proctor did on his behalf. Thus if the proctor had entered bond for a certain sum the client would be obliged to pay it if the bond was forfeited. This was specified in the clause of ratification which is illustrated in the examples of constitutions quoted above, and another example will be given below. The scribe of the acts or other notary public before whom the constitution took place is often described as ' stipulating ' about the ratification.'

The proxy contained : the names of the party or parties who constituted their proctor, then the names of the proctor or proctors who were being constituted by them, and lastly and account of the acts for which the proctor had been constituted. (I)

Proxies were either general or special. Peter Effard distinguishes between a ' General Proxy at the acts,' and causes demanding ' a special mandate,' in the passage quoted above. This suggests that proctors in some particular circumstances would be better to have a special mandate. Conset says that the differences between special and general proxies lay in that a general proxy gave power to prosecute the whole cause, while a special proxy only gave power to do and perform some particular act. (2) What Peter Effard meant by general and special proxies however can best be gathered by an examination of the examples he gives. Here is the ' General proxy at the acts.'

(I) See Bucks. Archd. M.S. d. 4. Bodleian. Folios 38,39,46,52,77,78,79,80, 83. for proxies. (2) Conset Part II. Chap. II. Sect. I.

' General proxy at the acts.

On the first of March the year of Our Lord 1426 W.A. .. constituted M.O. and D. J. jointly and separately in all causes and negotiations moved or to be moved before any judges, ordinaries, delegates, or their commissaries whomsoever, with the power of acting, defending, excepting, replying, libelling and receiving a libel, contesting suit, taking the oath of calumny and of telling the truth and any other kind of lawful sacrament on his behalf, and of petitioning for and receiving the benefit of absolution from any sentence of suspension and excommunication and for expenses, damages, and interest. Of provoking and appealing and of notifying the provocations and appeals, and of petitioning for and receiving the apostles ; with a clause of substituting and revoking the substitute and of ratification, with other necessary clauses and accustomed in law.' (I)

What these various powers were, will it is hoped be made clear at a later stage.

Here is the example given of a ' special proxy at the acts.'

' Special proxy at the acts.

Item. The second day of March. J. of B. of O. York diocese, constituted F.D. in all causes and negotiations moved or to be moved and especially in a matrimonial cause which he intends to move and prosecute, with the power of acting, defending, excepting, replying , and givning and receiving a libel, provoking and appealing and notifying and intimating the provocations and appeals with a clause of substituting and revoking the

(I) Cam. Addit . F 235.

substitute and of ratification with other necessary and lawfully accustomed clauses.' (I)

By the time of Elizabeth this kind of entry had become very much more abbreviated

It would seem, then that what Peter Effard meant by a special proxy was one which , besides conferring general powers, referred to some special causes , here a matrimonial cause. Here is an example of a general proxy from the Cambridge Precedent Book. There are two things to be especially noted in it, the power of substitution, always necessary in courts such as those at York where there was a press of business and proctors might have more causes on their hands than they knew what to do with, necessitating the exchange of causes between themselves, and the clause which indemnified the proctor for what he did on his client's behalf and ratified his acts. In it, as Conset says, the client ' promises to ratifie whatsoever his said Proctor shall act or do.' (2) It is noteworthy what command a proctor had over his client with a clause such as this.

' General proxy of one proctor and for one person, with the clause of ratification , as appears by it.

Know all men by the presents that I, J.S. of York diocese, ordain, make and constitute my beloved in Christ M.V.D. , cleric, factor, manager of business and special messenger by the presents in all causes, negotiations, suits, and complaints moved and to be moved which in any way

(I) Cam. Addit. M.S. 3II5. F. 236. (2) Conset Part II. Chap. II. Sect. I.

concern my person before any judges ordinaries delegates, subdelegates or their commissaries whomsoever against any of my adversaries on any days and at any places and hours so often and as often as I should happen to be present or absent, giving and conceding to my same proctor a special and general power and a general and special mandate in my name and for me to act, defend, except, reply, recall, to give and receive a libel, contest suit and take the oath of calumny and of telling the truth and any other kind of lawful sacrament or oath on my behalf, to produce in court, to draw up clauses and articles, and to reply to any positions and articles and interrogatories whatsoever, either out of office or at the instance of a party whenever there should be need. To object to crimes and defaults and to produce witnesses letters and instruments and any other kind of proof and to prove them and to attack and reject the things produced and exhibited by the adversary ; also to allege, propound and prove that I am notoriously oppressed by infirmity sickness and impotence and the causes of my absence and take oath upon them when need be and excuse me from a personal appearance . Also to petition for and receive damages, expenses and interest, and the benefit of absolution from any sentence whether simple or conditional , of suspension excommunication and interdict in full amendment and restitution of my standing.

To consent to judge, scribes, notaries and places (i.e. of judgement) and to attack them and to reject them , and to reject suspect judges and arbitrators and to choose them and to allege, put forward and

prove the causes of this suspicion and rejection. To provoke and appeal and to notify and intimate these provocations and appeals and to petition for the apostles and receive them . To prosecute the causes of provocation and appeal and to defend these causes whenever there shall be need and to consent and dissent as often as it should seem expedient to my said proctor about proceeding in the principal article and ommitting an appeal. Also to substitute another proctor or other proctors in his place and to revoke these substitutes or persons to be substituted and assume once more the office of a proctor on himself and exercise it.

And generally to do, exercise and procure everything else which cane be done or procured by a true and legitimate proctor, even if it demands a more special mandate.

I surrender a bond for my same true proctor and his substitutes and those to be substituted to ratify them to be present in judgement and to pay under pledge and pledge all my goods whatsoever.

And I ratify whatever was done performed or procured by me or in my name in any ecclesiastical judgement by my aforesaid proctor before the date of the presents against any of my adversaries on any days and place whatsoever and I redeem any bond offerred by my same proctor in my name by the presents. In witness of which thing (I have attached) my seal.' (I) This last paragraph has a note in the margin alongside of it. ' Clause of ratification of all and singular things made and had by the proctor before the date of this mandate of his in this

(I) Cam. Addit. M.S. 3II5 F 305.

part.' (I) A clause of ratification such as this was very important to a proctor as on many occasions they began suit for their clients before they received a proxy. This clause may be compared with another in the Cambridge Precedent Book, where the party constituting promises ' that he would firmly ratify during his life time whatever his said proctors or any of them or their substitutes did in the premisses or in any of them or their substitutes did in the premisses or in any of the premisses before the date of the presents or in future under pledge and obligation of all his goods and then and there he in fact put forward a bond.' (2)

The proxy given above is a fairly comprehensive example of the powers which a client entrusted to his proctor at York . The scribe who drew it up tried to include all the possible powers which a proctor might need in one document, and added a clause at the end giving him a general power to do anything he thought necessary. It is consequently rather a confused document to read at first. Most of the powers it conferred will be described later, with the exception of the powers granted with regard to appeals. Although it is so comprehensive other additions might be made to it which can be supplied from the other proxies in the Cambridge Precedent Book. In the event of the proxy being made out to more than one proctor for example the form would read:

(I) Cam. Addit. 3115 F 305. (2) Idem F 235.

' I.. constitute.. my beloved in Christ W.M.,V.D., J.W., C.M., and W.B. clerics proctors general of the court of York my true and legitimate proctors jointly and any of them by himself separately and wholly so that there should not be a better condition of occupation but what one of them has begun any of them may freely prosecute mediate and finish.' (I)

Moreover parts of the proxy might be made more full ; thus the phrase which authorised the proctor to proceed in all his client's causes might have the words ' whether moved out of office or at the instance of a party,' (2) added to it. Or again the party constituting might specify that he did not revoke any other proxies which he had previously made by this present proxy, (3) or he might specify that the appeals which his proctor undertook might be either direct or tuitorial appeals. (4)

The form of the proxies illustrated above survived almost in their entirety into Elizabethan times, though it will be readily seen that the proxies ' at the acts ' had become very much shortened in the way in which they were set down in the court books. John Martiall gives two good examples of proxies, the ' Proxy to appear before the judges ; (5) and the ' Proxy to appear in good form in the court.' (6) There is no real difference in the powers conferred by these proxies and there is only a minor difference in form.

SUBSTITUTION OF A PROCTOR.

' A substitution ' says Conset ' is the putting any one in his stead,

(I) Cam. Addit. 3II5 F 245. (2) Cam. Addit. 3II5. F 245. (3) Idem. (4) Idem. (5)Bodleian Bucks. Archd. M.S. d. 4. F 45. (6) Idem. F 77.

giving power to act in his absence.' (I) No proctor could substitute another until after the contestation of suit. (2)

A note of substitutions was made in the court book in the following manner.

' The substitution of Mr. Standeven . On the same Saturday, that is the twenty second day of October I586 between the hours of three and four in the afternoon within the registry or writing room of the Fair Consistory Court, Mr. John Standeven, notary public and one of the proctors general of this Fair Court of Consistory being personally present constituted substituted and put in his place the other proctors of this court jointly and severally in all and singular causes and negotiations pending in this court in which he was a proctor and gave and transferred completely to them and any of them jointly and separately all and entire power and authority bestowed on him by his respective masters and promised me, John Atkinson, notary public, who stipulated about the ratification. There were present then and there Thomas Eadmandson and Robert Clayntenson literate persons and witnesses etc.' (3) Proctors might either substitute all their colleagues, which was the more usual course , and made sure that someone was at hand to attend the court hearing, or they might suhstitute one or more of them. Occasionally the substitution of proctors became so involved, one substituting another and the second a third, that the judge would request a proctor to make the circumstances of the substitution clear.

(I) Conset Part II. Chap. II. Sect. 2. (2) Idem. (3) Consistory Crt. Bk. I586-87. F I4.

When a proctor undertook the prosecution of a cause for which he had been substituted he exhibited his substitution on his first appearance. Here is an example from the court books.

' On which day hours and place Mr. Mason exhibited his substitution which was among the acts in the registry for Mr. Broket and made his party for him. ' (I) Here is an example of such a substitution from the Cambridge Precedent Book.

' Another substitution of a proctor.

Know all men by the presents that I W. F. the specially deputed proctor of the venerable chapter, etc. in all and singular causes negotiations complaints and articles moved or to be moved by the same Chapter or against it before any competent judges, ordinaries delegated judges or their commissaries on whatsoever days and at whatsoever places have the power of substituting another proctor or other proctors in my place and revoking this substitute or substitutes and assuming once more the office of a proctor once more as often as need be, according to the force, form and effect of my proxy, ordain make and substitute my beloved in Christ C. of H. cleric, proctor as often as I should happen to be absent, giving him full power in the name of the said chapter and in my name to act, defend, and do and expedite everything else which could be done or expedited by me or by authority of my proxy if I were personally present. And I ratify whatever the said substitute may do in the premisses. In testimony of which thing, since my seal is unknown to many I (have

(I) RAS 59.

therefore procured) the seal etc. Given etc.' (I)

This is a general substitution by which the substitute is given power to undertake all the causes which are brought for or against the substituting proctor's clients. Good examples of a special substitution, whereby a proctor was substituted for some particular act are the substitutions of proctors made to their colleagues to go into the country with a commission and examine witnesses.

THE PRIMARY CITATION.

Once a proctor had been constituted by the plaintiff the first thing he did was to appear before the judge out of court and exhibit his proxy. He then asked that a primary citation be sent out for the defendant. (2) This was a judicial act whereby the defendant was commanded to enter the suit at a certain day and place. The sending out of this citation was then recorded in a ' Citation Book ' which was kept in the court archives. These recordings of citations corresponded to the ' citatory decrees ' of which Hockaday speaks. (3)

A citation book for the years I6II-I7 has survived and gives a clear picture of the procedure involved. (4) The decrees of citations were entered into the book as they were made, along with the names of the persons cited and particulars of the cause. Probably the book was used jointly by the different courts. Inhibitions were also recorded in the book, as were letters dismissory. (5) The date on which the

(I) Cam. Addit. M.S. 3II5 F 376. (2) Hockaday P. 229. Trans. Bristol. and Gloucester Arch. Soc. for I924. ' The Gloucester Consistory Court.' (3) Idem. (4) ' Citation Book.' I6II-I7 . (5) Idem F I5, 2I.

cited person had to appear was also recorded. Here is a typical entry. ' Cited. John Stawton executor of the testament of Nicholas Huton, formerly of Seaton, deceased, in a cause of subtraction of a legacy against Teusday after St. John Baptist. Date 17th June 1611.' (1)

The citation contained the name of the judge and his commission if he was a delegated judge, if he was an ordinary judge the ' style of the court ' where he was judge. A citation also included the name of the person cited, the day and place on which he was to appear , the cause for which the suit had been begun and the name of the party at whose instance the citation had been obtained. The day mentioned in the citation could be either a court day, which was specified, or a day of the month, with the proviso that that day must be a judicial one, that is one on which a court hearing was held, otherwise the party was to appear on the next court day following. ' The time and appearance ' says Conset ' ought to be more or less according to the distance of the place where they live.' (2)

These requisite parts of a citation are illustrated by the following primary citation, taken from the Bodleian Precedent Book.

' General citation.

The (Commissary of) the Official to the curate of T. greetings. Cite peremptorily W. M. your parishioner that he appear before us or our legitimate substitute in the greater church at York on a day of March next coming after the date of these presents to reply to a libel ecclesiastically put forward... Further let him do and receive what shall be just ,

(1) ' Citation Book' F 5. (2) Conset Part II. Chapter I. Sect. 2.

and for the proof of the making of the citation send back these presents to us at the said day and hour and place sealed with an authentic pendant seal. (Given) at York under the seal of our office aforesaid. etc.' (I) Here there are two usual clauses in York citations , the intimation that the cited person is to ' do and receive what shall be just,' or do and receive what justice shall advise' (2) and the clause at the end of the citation, which is included in most citations, ordering the person who executed the citation, who might, as has been pointed out, be one of several persons to send it back with a certificate of its performance. Primary citations might be directed, as Conset says to several kinds of persons, ' giving them or him power to execute the same.' (3) and ' every literate person, who can read any thing that is Written or Printed (though he understand not the Latin Tongue) may be accounted a fit Mandatory to execute the said Mandate ;' (4)

One of the aspects of procedure which was to be changed by the Canons of I604 was the citation ' quorum nomina ' as it was called in the southern province. This was abolished by Canon I20 of the Canons of I604. (5) It seems to have been commonly used at York. Here is an example of a ' Citation out of office with a schedule attached.'

' Citation out of office with an attached schedule.'

The commissary general of the Lord Official of the court of York to the Dean of such a place etc. Greetings. Cite or have cited peremptorily all and singular whose names are written in the schedule attached to the pres-

(I) Bucks. Archd. M.S. d. 4. F. I5. (2) Idem F I4.
(3) Conset Part II. Chap. I. Sect. 2. (4) Idem. (5)' Constitutions and Canons Ecclesiastical. I604. ' H.A. Wilson I923.

-ents that they appear before the said Lord Official or us at such a place on such a day to reply personally to certain articles concerning their mere soul's health and to etc. and for the proof etc.' (I)

Another citation for citing a number of persons is the ' Citation from the Exchequer.' (2) which cites ' all and singular whose names are written on the back of the presents.'

Conset divides citations into peremptory citations, in which the defendant is commanded to appear peremptorily, mandatory and inhibitory citations in which the defendant is warned to appear and the judge before whom the cause is or was being tried is forbidden to proceed further, mandatory and intimatory citations, where for example executors of wills cite all the next of kin to appear and see wills proved and intimate to them that they intend to proceed whether they appear or not. (3)

An example of the peremptory citation is the ' General citation,' given above. The primary citation which began appeal causes was always mandatory and inhibitory, as they contained an order and an inhibition , a good example, given by the Bodleian Precedent Book, is the ' Citation with inhibition.' (4) Here is the clause of inhibition which it contained.

' Therefore we order you jointly and separately and firmly enjoin you that you inhibit by our authority the aforesaid Mr. Robert Laborne, Commissary of the Most Reverend Father in Christ the Bishop of Chester

(I) Bucks. Archd. M.S. d. 4. F 4. (2) Idem F I5. (3) Conset Part II. Chap. I. Sect. 2. (4) Bucks. Archd. M.S. d.4. F 84.

and his scribe of the acts or scribes of the acts and the said Katherine in particular and all and singular in general who ought to be inhibited in this part, whome we also inhibit by the tenor of the presents that they do not attempt or do anything in prejudice of the said party appealing during this undecided business of appeal and this suit pending before us so that the party appealing may have unimpeded means to prosecute her business of appeal, as is just. '

John Martiall's book gives an example of the mandatory and intimatory citation. It is ' A citation by ways and means notwithstanding in any way an objection to the banns.' (I) In it the Official orders all persons receiving it to cite a person by ordinary means or by ways and means to show cause for his objection to the publication of banns between two persons and to ' allege and propound his right and interest in the cause if he thinks he has any.' The citation goes on. ' Intimate moreover to the said J.H. that whether he intends to appear on the said day and place or not we intend to give sentence for the solemnisation of marriage between them according to what the law demands, notwithstanding in any way the absence or objection of the said J.H.'

As a rule citations are general ones. That is they order a person to attend all the acts of a cause. An example is the ' General Citation' given above. Sometimes the citation definitely stipulates that the recipient is to attend all acts, as in the ' Citation to reply to the libel and to all acts.' (2)

(I) Bucks. Archd. M.S. d. 4. F 86. (2) Cam. Addit. M.S. 3115 F 12.

Examples of the special citation, by which a party was ordered to attend some particular act of the court , are the compulsories which invite a person to give testimony. (I)

The general citation given above is of course a citation used in a cause of instance. Here is a citation sent out in a cause where the judge is proceeding out of mere office.

' Citation out of office.

The (Commissary of) the Lord Official etc. to a certain Dean . Greetings . Cite peremptorily so and so that he appear before us at such a place on such a day to reply personally to certain articles concerning his mere soul's health to be objected to him out of our office and further to do and receive what justice shall advise. And for the full proof of our mandate send back the presents to us or to the said Lord Official at the said day and place sealed with your pendant seal. Given at York. ' (2)

Another form of citation ' ex officio ' which specifies that the office has been promoted is given by Peter Effard's book. (3) Here it is.

' Citation out of promoted office.

The (Commissary of) the Lord Official to the Dean of C. Greetings. Cite peremptorily V. of P. that he appear before the said Lord (Official) on such a day next coming to reply personally to us about certain articles concerning his mere soul's health to be objected to him out of our off-

(I) e.g. Bucks. Archd. M.S.d. 4. F I5. (2) Idem F 3. (3) Idem F. I5.

-ice at the promotion of C. of P. and to do etc. '

Another kind of primary citation in a cause of office illustrated by the Cambridge Precedent Book is the ' Citation out of office with an attached schedule.' This is a citation by means of which a number of people are cited at the same time with the one citation, an annexed schedule containing their names (I) on the same principle as that of 'quorum nominorum' citations.

Another kind of primary citation made use of when the person to be cited lived outside the judge's jurisdiction was the ' Citation because of mutual occasion,' the ' Citatio sub mutue vicissitudinis optentu ' as it was called, a name which might also be translated ' A citation upon common exchange.' This citation was addressed to the ordinary of the jurisdiction where the cited party lived, and it asked that the party be cited and that this citation be certified to the judge from whom the citation had issued. A citation of this sort was employed if the Official at York wished to cite someone who lived in the diocese of London for example.

The Statute of Citations ' limited the heretofore recognised power of the archbishop to summon parties outside their own dioceses, except on appeals, or after letters of request or in case of the negligence of the diocesan bishops.' (2) Letters of request seem to have been merely another name for this kind of citation. It was probably never very usual for the Archbishop to summon parties living outside his own diocese

(I) Cam. Addit. M.S. 3115 F 4. (2) Eccles. Courts Commission Report 1883. Hist. Appendix. I. 23 Hen VIII c. 9 . Revived by Elizabeth.

directly, that is without letters of request, as it would have involved inconvenience and expense. The mandatories of another diocese could not have been expected to deliver the Archbishop's citations unless they had first been requested to do so by their own ordinary. This would have necessitated the sending out of a special apparitor, an expensive business.

The fact that the machinery of citations on mutual occasion was in existence, and , so far as can be judged from the number of forms in the Bodleian Precedent Book, in fairly common use speaks volumes for the efficiency of the ecclesiastical discipline of the time, as almost every citation of this sort was sent out for a party who had fled the diocese because the knew that he was bound to be apprehended if he stayed. In other words , a good number of Elizabethans dreaded the effects of excommunication followed by a significavit so much that they preferred to fly to other parts of the country rather than wait to be arrested. This they certainly would not have done if the machinery, in York at least, had been so inneficient as F. Price and other writers have suggested. (I)

The principle of mutual self help which underlay the ' citations upon mutual occasion ' is an extremely interesting one. There was always a promise contained in the citation that the sender would be prepared to perform the like office for the ordinary to whom it was sent should occasion arise. Here is an example from the Cambridge Precedent Book. It is perhaps a little out of the ordinary as it states that one citat-

(I)E.H.R. LVII 1942 ' The abuses of excommunication and the decline of Ecclesiastical discipline under Queen Elizabeth.' F. Douglas Price.

-ion upon mutual occasion has already been sent and returned, but that something has gone wrong with the certificate. Here it is.

' To cite upon mutual occasion.

To the venerable father in Christ and Lord the Lord J. Bishop of Lincoln or his Official. Jc of N. doctor of laws, Treasurer of the Church of York and Vicar General of the most Reverend Father in Christ and Lord the Lord T. by the grace of God Archbishop of York, primate of England and legate of the Apostolic See, who is out of the province of York , with all the reverence and honour due to such a father, with the intention of an aid to the law and for mutual compliance.

Whereas the said venerable father the Lord Archbishop of York lately undertook by his letters to a certain effect, directed to your paternity that you would deign as an aid to the law and because of mutual occasion to cite or have cited J M. the widow of R. of S. knight, to appear before the same Lord Archbishop or us on the said days and place expressed in the said letters in a certain way and form contained in the same letters this was of course duly executed and then because of a defect of the certificate of this citation on a said day now past it could not by any means obtain its due effect.

Therefore we request your paternity, most reverend, under citation upon mutual occasion and as an aid to the law and ask you that you would, if it please you, have the same Lady M. widow of the said R. of S. cited that she appear before the said most reverend Father the Archbishop of

York or us on the next day after the day of this citation made to her if it is a court day, otherwise on the next court day then following to reply personally to and speak the truth about objections to be made to her concerning certain crimes and deeds notoriously committed by her... to be made out of the office of the said venerable father and our mere office (and) concerning merely her due manner of living and her soul which cognisance and punishment in the ecclesiastical court is notoriously known to belong to the jurisdiction of the said father (i.e. the Archbishop) in this part.

And we intend to proceed merely for her soul's correction when the truth concerning this matter shall be known better. And further let her do and receive what the quality and nature of this business of correction demands, that is a peremptory term and personal appearance as the nature and kind of this business demand, and as we have considered it ought to be managed.

Certify if you please by your letters patent having this effect if you have had the said M. cited personally and also what you have decreed shall be done in the premisses at the said day and place from the day of your receiving the presents.' (I)

When a citation because of mutual occasion was received by the Official at York he proceeded to cite those under him in the following manner.

(I) Cam. Addit. 3115 F 40.

' Secondary citation obtained under mutual occasion.

The Official of the Court of York to all men throughout the whole province of York. Greetings in the Lord. We lately received letters from the eminent man Mr. Thomas Hede, Doctor of Laws and Official of the Consistory of the Bishop of London in these words. ' Thomas Hedde etc.'

We therefore wishing to act in the manner of the requisition of the said eminent man in this part, intrust to you and order you , firmly enjoining you that you cite or one of you cite peremptorily the aforesaid Mr. Thomas C. that he appear before the said Mr. Thomas Hedde the Official of the Consistory of the Bishop of London in the Cathedral Church of St. Paul in London in the consistory place there on the twentieth day after the citation made to him in this part if it is a court day otherwise on the next court day then following, on which day the said Consistory of the Bishop or its President gives justice and sits as a tribunal, on the accustomed hour to reply personally to the positions and articles aforesaid. And further to do and receive what justice shall advise in this part.

And duly certify to us what you do in the premisses or what one of you does within the space of six days after the said citation made unto him or let he among you who first executed our mandate certify personally or by his letters patent authentically sealed along with the presents . Given etc.' (I)

(I) Bucks. Archd. M.S. d. 4. F 50.

The offer of help in return for the aid of the person to whom this citation was addressed seems to have been omitted by the scribe from the first citation given, probably in order to shorten the document . It occurs at the end of a ' Citation upon mutual occasion.' (I) in the Bodleian Precedent Book, in the words ' We intimate to you by the presents that we shall be ready to perform your filial request.' The fact that the citation is addressed to the ' venerable brother Cuthbert of Durham our suffragan bishop ,' accounts for the wording. In this case as probably in many others the party required has fled for fear of the proceedings against her in the ecclesiastical courts ; the citation rehearses that ' a certain Mervella Everingham of our diocese lived wickedly for some time in adulterous and incestuous embraces with a certain William Blytheman who is now dead within our diocese of York. Having become pregnant through this foul concubinage she fled from our diocese of York to your diocese lest she be punished on account of this abominable crime as an example to others and she there lies hid and without your help we cannot cite her.'

The procedure upon these letters of request or citations upon mutual occasion was probably effective, but it must have been slow. The fact that the Archbishop of York was usually at feud with his brother of Durham probably did not help matters much. In a letter to be quoted later an Archbishop of Canterbury relates how an offender can fly from diocese to diocese in the way Mervella Everingham did . This illustrates one of the loop holes in the procedure against offenders but it also

(I) Bucks. Archd. M.S. d. 4. F 6I.

shows that many offenders preferred constant flight to the apparent certainty of capture on a significavit.

CERTIFICATE OF CITATION.

When the plaintiff's proctor had obtained his citation the next thing which occurred in the cause was the delivery of it by the mandatory. A good deal of delay might have to be expected here ; citations at a later stage of proceedings are constantly noted in the court books as having been ' decreed but not sent out.' (I) and probably much the same delay occurred where primary citations were concerned.

The way in which a citation was delivered has been described in the account of the apparitor's office. After it had been delivered the fact that it had been served had to be certified to the court in some way. This was done either by the mandatory's appearing in court and swearing before the judge that citation had been made, or by his informing the proctor of the circumstances of citation and the proctor's drawing up of an ' authentical certificate' upon these circumstances or by a third method, which is described by Conset in these words. ' In some Courts, If a Mandatory (who is known to be a person of Credit) writes a Certificate to the aforesaid purpose, it is good without an Authentical Certificate.' (2) This last seems to have been the most usual if not the invariable method of certifying a citation at York at this time. Here is an example of such a certificate which has been preserved in

(I) Consistory Crt. Bk. I586-87 F34. (2) Conset Part II Chap. I. Sect. 2.

one of the Act Books.

' Certificate of this citation.

The within named Christopher Witton, Clerke, beinge personally met withal in the parishe churche of Crosbie Ravenswathe in the countie of Westmorland was cited by vertue of this citation accordinge to the contentes thereof in all points by me Anthonie Dobbinson of Peareth lettered, the viii day of April I576 and intimacion was to him made accordinge to the same citacion in the presence of Lancelote Pickeringe, Thomas Billingham, Henrie Rigge, Henrie Lows, James Fayray, Johannes Wilson, Richard Winter, James Smithson , Roland Parkin, and John Parkin.

By me Anthonie Dobbinson,

Lettered.' (I)

The other citations and documents such as letters monitional, letters of excommunication and the like which issued from the courts were certified in the same way.

If the certificate of citation was not satisfactory the party cited would have a cause of appeal or a reason for refusing to appear in court, so care was taken that the certificate was in order. On one occasion when several persons had been cited the judge ' because the certificate of the citation formerly made in this part did not seem sufficient decreed that all and singular the next of kin of the said John Kitson be cited anew.' (2) The same principle applied to letters monitional and other documents . The judge decreed that a litigant called Coke should

(I) Sandes Act Book F 99. (2) RVIIA 38 F I4.

be monitioned again ' because the said certificate (of the letters monitional) was by no means sufficient.' (I)

Should the defendant refuse to appear on the ground that he had not been cited properly the apparitor was brought into court to swear to the correctness of the citation. Thus in a cause in the Dean and Chapter court where the defendant , Richard Frankland to refused to appear the mandatory who had cited him, one Edward Jones who lived in the Cathedral Close, was brought into court to swear to the correctness of the citation. He swore that he had cited Frankland on Wednesday last at the usual house of residence of Archbishop Thomas , vulgarly called ' the deanry howse ' within the Close of the Cathedral, ' according to the form and effect of this citation.'

The defence countered with the rather ingenious argument that the mandatory had indeed been summoning Frankland from a spot inside the jurisdiction of the Dean and Chapter, but that Frankland was not legitimately cited as he was living in the Deanery. In other words the mandatory, was presumably standing on the Deanery doorstep while Frankland was inside the hall. As he was in the Deanery he was 'not dwellinge within the jurisdiction of the deane and Chapter of the said Cathedrall and Metropoliticall church of Sainote Peter of York, but within the jurisdiction of the deane of the said church onelie. And the said Henrie Procter notarie publique doth further in the name of the said Mr. Rich-

(I) RVIIA 38 F 82.

-ard Franckland alledge that the said Edward Jones did not cite or comm-ande the said Mr. Richard Franckland to appeare in this place betwixt the houres mentioned in the said Citation. And that therefore he the said Mr. Richard Francklande ought not nor is bounde to appear in this place.' (I)

CITATION BY WAYS AND MEANS.

It occasionally happened that the apparitor could not find the defendant when he went to cite him because he had absconded. In this case the proctor informed the judge of what had happened , showed the certificate of the citation, and asked the judge to grant a ' citation by ways and means,' which he accordingly did. Here is an instance of this happening.

' Office of the judge promoted by Mr. Stocke against Raph Barton, squire, proprietor, farmer or occupier of the fruits of the church of Kymersley, Adam Arnall, proprietor farmer or occupier of the fruits of Kineton and Mr. John Whitgift, Professor of Holy Theology, Master of the College of Holy Trinity , Cambridge and its fellows proprietors of the church of Flintham diocese of York, in a cause of detention of pensions and synodals.

On the act of appearance. On which day hours and place the said Stocke ... introduced the citation with the certificate on the face of it by which it appeared that the said defendants had been sought for and had not been found, wherefore the judge at the petition of the said Stocke decreed these defendants be cited personally if etc. (i.e. if they safely

(I) RVIIA 38 F 24.

could) otherwise by ways and means to the former effect for Thursday next coming in three weeks at these hours and place.' (I)

This had no effect and shortly afterwards another citation ' by ways and means' was decreed. It seems impossible to come to any other conclusion than that Whitgift and the fellows of his college left Cambridge or at least their college on the appearance of the York mandatory; a good mandatory would hardly be put off by the denials of the college porter for example and would probably conduct a search for them.

A citation by ways and means was ' a Publick Citation being as it is Executed either by Public Edict (a Copy thereof being affixt to the Doors of the House where the Defendant dwells or to the Doors of the Church in time of divine service ; or per campanam, the Tolling of a Bell.' (2) Here is the precedent for a ' viis et modis ' as it was called, given by Peter Effard's book.

' Citation by ways and means.

The (Commissary of) the Lord Official to the Dean of so and so etc. Greetings. Cite peremptorily or have cited B. N. of D. if you can apprehend him personally otherwise his proctor if he left one . (i.e. at the acts , in court.) If he did not leave one then cite him by the publication of the citation in his parish church of B. aforesaid and other churches and public places in which it shall be expedient to do so also at his dwelling place where he usually lives if there is safe access to it. Also when you have made denunciation to his noted acquaintances and

(I) RVII A 38 F 24. (2) Conset Part II Chap II Sect. 5 4.

friends openly and publicly propound it, so that notice of this citation may truly come to him that he appear. And certify the said Lord Official and us on the said day and place by word of mouth or by having the presents sent back sealed with any authentic seal. Given at York etc.' (I)

The Elizabethan form of this document is given for comparative purposes in an endeavour to illustrate how forms shortened towards the time of Elizabeth.

'Citation by ways and means.

The (Commissary of) the Official to the curate of L. of Kingston upon Hull. Greetings. Cite peremptorily William Good, executor of William Good deceased personally if he can be apprehended and there is safe access to him otherwise by public declaration of the citation, viz. by leaving these presents for a time fixed publicly on the walls and door posts of the parish church of L. aforesaid and at his house of residence and also among his noted neighbours, familiars, and friends and by other ways and means whereby our citation may come to the notice of William that he appear before us in the greater church of York on Thursday next after the date of the presents to reply to (positions) of H. H . and Margaret his wife to be ecclesiastically put to him. And further let him do and receive what justice shall advise. And for the proof of etc. as above.' (2)

A certificate was then made about the circumstances of the serving of the citation and the citation was brought into court. On this occasion as later if the defendant did not appear after being called three

(I) Cam. Addit. M.S. 3II5 F 6. (2) Bucks. F. I4.

times the plaintiff's proctor accused his contumacy and requested the judge that he be declared excommunicate.

A citation by ways and means was also used where the cited party had been served with an ordinary citation and had failed to appear and it was also used at later stages of the cause.

CONTUMACY.

The beginning of the suit must now be considered , or rather touched on .

The court record began with a note on the left hand of the page of the names of the two parties, the cause they were concerned in , what kind of cause it was , the place where the parties lived and sometimes also a note of their proctors' names. Following this came a note ' On the act of appearance ' to show that the causes was at its first stage. Each subsequent hearing began with a similar note, such as ' on the act of excommunication,' or some such heading.

When an ordinary citation had emanated for a defendant or when the plaintiff's proctor had alleged that he could not be found and a citation by ways and means had been sent out for him, the cause was in a fair way to begin.

The first judicial act can best be described in the words of Peter Effard.

' It must be known that every cautious proctor ought to appear at the beginning of his cause with the certificate of his letter of citation on the day contained in the same citation before his judge

sitting as a tribunal on this behalf,' and before anything else have the cited party in this part summoned then and there by the apparitor general of the same court or in a public place before the said judge.' (I)

After this summons the cited party might appear, in which case the judicial proceedings in the cause began or else he might not appear in which case the plaintiff's proctor petitioned that he be declared contumacious. Considerable changes in procedure against contumacious persons took place between the time Peter Effard's book was written and the time of Elizabeth. It is difficult to say how far they had been completed by the end of the reign. Here first of all is Effard's account of proceedings.

' If the defendant cited in this part does not appear then the said proctor says in Latin in this form.

' Lord Judge I accuse the contumacy of this man in not appearing.' Then the judge ought to say in this form.

' R.R. of C. having been cited summoned, long awaited and not appearing by any means we pronounce him contumacious and in penalty of his contumacy we have decreed execution of suspension.'

And the party ought to prosecute by a letter of suspension with a clause in the same letter to cite the said cited party once more to another day. When this letter has been certified the same proctor ought to appear with the same letter of suspension and its certificate before the former judge and have the said cited and contumacious party publicly

(I) Cam. Addit. M.S. 3115 F 235.

summoned by the apparitor. And if then the summoned party does not appear then the same proctor says in Latin in this form.

' Lord judge I accuse the contumacy of this person R. of K. who has been suspended from entrance to the church and has been cited to this day and place at the instance of such a one my master, and has been long awaited and has not appeared by any means ; and I petition that he be excommunicated in writing.''(I)

Suspension was minor excommunication as distinct from greater excommunication. It prohibited a person from receiving the sacraments and from entering a church, but it did not entirely cut off a member of the church from the body of the faithful, as greater excommunication did.(2) Here is an example of a ' letter of suspension ' from the Cambridge Precedent Book.

' Suspension upon it.' (the primary citation given immediately previous to the letter of suspension)

The Commissary general of the Lord Official of the court of York to the Dean of B. Greetings. Whereas B. of N. stands suspended from entrance to the church because of his contumacy made before us, at the instance of J. of H., justice demanding it, we order you and enjoin you that you announce and have him publicly announced by others as having been and being so suspended, citing him nevertheless peremptorily that he appear etc.

And for the proof of the fulfilling of this our mandate send back

(I) Cam. Addit. M.S. 3II5 F 235-6. (2) Cam. M.S. Addit. F 236 and Hockaday P. 23

the presents to the Official or to us on the said day and place , sealed with your seal attached. Given etc.' (I)

Another form of suspension is given by John Martiall (2) in which the Official cites a vicar in the following fashion.

' (The Commissary of) the Official to Mr. J. F. vicar of B. Greetings. Whereas you stand suspended because of your contumacy contracted before us at the instance of J. W. of the city of York by the authority of the said court, justice demanding it, from the celebration of divine service we denounce you as having been and being so suspended, ordering you by virtue of your obedience and under penalty of contempt that you denounce your parishioner J. D. as being and having been so suspended from entrance to the church because of his similar contumacy , citing you peremptorily and either of you by the tenor of the presents that you appear and either of you appears before us or our legitimate substitute in the greater church of York in the consistorial place there...' (3)

It would seem that the use of suspension was growing less during this period, at least as regards the laity. The usual procedure is for the judge to declare the party who fails to appear contumacious and then excommunicate him. It must have been felt that procedure by suspension was too cumbrous, and of too little effect . The defendant was summoned , and if he did not appear the plaintiff's proctor petitioned in most cases that he be decreed contumacious.(4) The only intermediary

(I) Cam. M.S. Addit. 3II5 F I. (2) Bucks. F I4. (3) Idem. (4) See Consistory Crt. Bk. I586-87 for an instance where the proctor does not petition for the defendant to be declared contumacious.

step was the reservation of contumacy to give the party time to make an appearance if he wished to do so. Usually a fair amount of law was allowed to the defendant who did not appear. Much would depend on the judge's opinion of whether the defendant had not been able to arrive in court through unavoidable delay or whether he felt that he was being deliberately contumacious. Here is an example of a party being decreed contumacious.

' On the act of appearance. On which day hours and place Mr. Broket introduced a citation with its certificate for the defendant and as he did not appear by any means the judge at the petition of Mr, Broket, who accused his contumacy pronounced him contumacious and reserved penalty of this his contumacy till Teusday next.' (I)

EXCOMMUNICATION.

If the defendant still did not appear after having been summoned the plaintiff's proctor petitioned the judge that he should be decreed excommunicate in penalty of his contumacy as has been described in Peter Effard's account with reference to suspension. To continue in Peter Effard's words.

' And then the judge says . ' R. of K. having been suspended cited summoned and long awaited and not appearing by any means we pronounce him contumacious and in penalty of his contumacy we decree execution of excommunication against him. And then the said acting party ought to procure a certain letter to denounce the said contumacious and ex-

(I) Consistory Crt. Bk. 1586-87 F 13.

communicate person with a certain citation in it for another day.' (I) So far this describes normal procedure at York during the time of Elizabeth, but now Effard goes on to describe another form of proceeding against the contumacious which had become obsolete about this time.

' When this day has arrived and the said letter has been certified the aforesaid proctor ought to appear before the said judge as before and have the said excommunicated person summoned publicly by the apparitor and if he does not appear then the said proctor ought to say as above. ' Lord judge I accuse the contumacy of this man R. of K. who has been suspended and excommunicated and once more cited to this day and place and has not cared to appear in any way, and I petition that the sentence of excommunication may be made heavier against him.' And the judge says. ' We make the sentence against him more heavy.' Then the said acting party (ought to) prosecute by a certain letter to denounce the same excommunicate and absent party with bells rung and in the form * and cite him once more for another day. When this day has arrived the said proctor ought to have the said excommunicate summoned as above and if the excommunicate party does not appear then and there in the term the said proctor ought to say in the following form.

' Lord Judge whereas R. of K. has been suspended and excommunicated with bells rung and other due solemnity and has been once more cited to such a day and place at the instance of so and so my master I his proctor accuse the contumacy of this man once more and petition that the citat-

(I) Cam. Addit. F 236. * Effard means the form of this document given in his book.

-ion be made more heavy with a clause of inhibition.' (and then the judge says) ' R. K. having been suspended and cited and summoned and long awaited and not appearing by any means we pronounce him contumacious and in penalty of his contumacy we make the sentence of excommunication against him more heavy by a clause and we inhibit all faithful Christians as in the form and we decree the same contumacious person R. of K. to be cited to say cause why the Kings majesty ought not to be written to for the arrest of his person. And thereupon the said acting party ought to prosecute by this letter of aggravation with a clause , with bells rung etc., with the inhibition and citation in this way as is contained in the form.' (I)

It will be seen that there were several kinds of documents employed in this procedure ; the letter denouncing the excommunicate person or letter of excommunication, which continued to be used in Elizabethan times and long after, the ' aggravation ' if that name be allowed, the letters of excommunication with ' bells rung ', and the ' clause of inhibition, which if not obsolete, were fast becoming obsolescent. The form of letters of excommunication will be given later. Here is a form of ' aggravation.'

' Aggravation.

The Lord Official of the Court of York etc. To the Dean etc. Greetings . Whereas so and so stands excommunicate because of his many contumacies made before us at the instance of so and so we have decreed that the sentence of excommunication be made more heavy by authority of the said

(I) Cam. Addit. 3II5 F 237.

court justice demanding it, we order you that you publicly and solemnly announce him and have him announced by others as being so excommunicated with bells rung , candles burning and put out, and the cross raised on high as the custom is, citing him nevertheless (to appear .) ' (I)

Here is the clause of inhibition;it is given in the form of a citation with the immaterial parts cut out, a common procedure on Effard's part.

' Inhibition.

The (Commissary of) the Lord Official etc. Greetings, whereas a certain person (stands excommunicate) because of his many contumacies made at the instance of so and so , we order you that you (cite) him etc. Inhibiting all faithful Christians that none of them dare to communicate with him being so excommunicate except in those circumstances where the law permits. Cite him nevertheless etc. ' (2)

' Those circumstances where the law permits ' refers to the prohibition by canon law against any person having any communication with an excommunicated person unless with the purpose of reconciling them to the church . (3)

Here is the ' Letter of excommunication with bells rung and an aggravation with an inhibition.'

' The Commissary of the Lord Official to the chaplain of the parish of S. Greetings. Whereas the Lord J. Chaplain of K. and A. who stands excommunicate because of their many contumacies made at the inst-

(I) Cam. Addit. 3115 F 2. (2) Idem F 2. (3) Conset Part II. Chap. III.

-ance of our office before us, justice demanding it, we order you, enjoining you firmly that you publicly and solemnly announce them as being so excommunicated with bells rung and candles burning and put out and the cross raised on high as the manner is, inhibiting all Christians that none of them presume to communicate with them. Also publicly denounce J. V. of E. because of his contumacies at the instance of our office contracted before us as being suspended , and cite them nevertheless peremptorily that they appear before us in the Exchequer of our Lord the Archbishop of York on a day, etc (to reply) to us upon certain articles etc.' (I)

How much of this elaborate, not to say cumbrous procedure survived into Elizabethan days ? John Martiall has gone to the trouble to copy out a ' re-aggravation of an excommunication,' (2) which is a pre-reformation form, so perhaps aggravation was still used . It does not seem to have been used normally, however , and Conset and the other standard writers who followed Clerke make no reference to the use of suspension and aggravation as normal modes of procedure against the contumacious person. Presumably the need was felt for a shorter method, or at least a less complicated method , of dealing with offenders of this sort.

Conset's definition of what post reformation excommunication , with 'book and candle and bell knelling ' put aside may be inserted here. ' Excommunication ' says Conset , is ' a power or Authority invested in

(I) Cam. M.S. Addit. 3II5 F 4. (2) Bucks. Archd. M.S. d. 4. F89.

the Church which secludes those on whom it is inflicted from having or maintaining any Communion or Society with those who are members of the Church.' (I)

There were two kinds of excommunication, the greater or major which forbade a person to receive or administer the sacraments or consort with the faithful ' in Human or Divine Affairs ' and the lesser or minor excommunication called suspension, which has been already described.

Procedure in obtaining the excommunication of the defendant for non-appearance was as follows. 'The plaintiff's proctor appeared, accused the contumacy of the defendant in not appearing, begged that he be excommunicated and offerred a schedule of excommunication which the judge read. Here is an example of an offender being excommunicated. First of all the citation and certificate were introduced then ' When the said Pickeringe had been summoned and had not appeared by any means the judge at the petition of Mr. Broket, who accused his contumacy etc. pronounced him contumacious and in penalty of this his contumacy excommunicated him in writing as more plainly appears from the tenor of the schedule read thereupon by the judge.' (2) Usually, as has been said , the offender was allowed a few days law. The judges at York cannot in the main be accused of hasty excommunication.

Here is what appears to be a schedule of excommunication taken from John Martiall. It approximates quite closely to schedules of excommunication in the precedents given for the Court of Arches and other southern

(I) Conset Part II Chap. III. Sect. I. (2) D.& C. Crt. Bk. RAS59 F 5.

courts (I) and it is certainly not what its title would suggest, a denunciation of excommunication that is a letter denunciatory as there is no order to anyone to denounce the excommunicate person. Possibly Martiall used the word ' denunciation ' with the meaning of 'schedule.'

' Denunciation of excommunication for non-payment of tithes.

In the name of God, Amen. We, Thomas Marsar, canon residentiary in the metropolitical church of York sufficiently and legitimately deputed commissary or collector to collect and levy the annual tithe conceded in perpetuity to our lord the King in the Parliament of England and also the subsidy lately conceded by the prelates and clergy of York to his same royal majesty in their convocation , rightly and legitimately proceeding legitimately cited, warned and summoned all and singular to this day and place and long awaited them and they not appearing by any means nor caring to pay the said tithe and subsidy touching themselves and their ecclesiastical promotions we have pronounced them contumacious and in penalty of their contumacy have decreed them and any of them to be excommunicate and we wish to declare them as excommunicate in these writings.' (2)

After this schedule had been read out by the judge it was left in the hands of the registrar who made out ' Letters of excommunication.'

The later forms of these letters of excommunication as shown in Martiall's book do not differ greatly from the example which will be given shortly under the heading of ' ipso facto' excommunication. It

(I) See for example ' The Clerks Instructor.' Dublin 1766. (2) Bucks. Archd. M.S.d.4. F 86.

will be enough to say here that they usually contain first the judge's name and the style of his court, the address of the letters, which may be to some particular person or to ' all and singular rectors, vicars, chaplains, curates and those not curates wherever constituted throughout the diocese of York,' (I) the circumstandes under which the excommunicated person had incurred first the sentence of contumacy and then of greater excommunication, with the addition of the phrase ' justice demanding it.' (2)

The recipients of the letters were ordered to denounce the excommunicated person and to cite him to appear before the judge or his deputy on a certain day and place. (3)

Here is an example of the earlier letters of excommunication. First in a cause of instance.

' Excommunication at the instance of a party.

The Lord Official of the Court of York etc. to the Dean of N. Greetings. Whereas so and so stands excommunicate by authority of the said court because of his many contumacies made before us at the instance of so and so, justice demanding it, we order and enjoin you that you pronounce him as having been and being so excommunicate , citing him peremptorily nevertheless that he appear etc. And for the complete fulfilling of the proof of our present mandate send it back etc. to us on the said etc.' (4)

Here is a letter of excommunication in a cause of office.

(I) Bucks. Archd. M.S. d. 4. F 85. (2) Idem. (3) Idem. (4) Cam.M.S. Addit. 3II5. F. I.

' Another excommunication in a cause of office.

The (Commissary) of the Lord Official etc. to the Dean of N. Greetings. Denounce C. of C., and A. of S., as having been publicly excommunicate because of their contumacies made before us at the instance of our office, citing them to d etc.' (I)

When these letters of excommunication or denunciatory letters, as the Bodleian Precedent Book calls them (2) had been made out the judges seal was attached to them and the plaintiff sent them down to the rector or vicar of the parish in which the excommunicated person lived, so that they could be published during divine service on Sundays and holy days. The rector or vicar then certified the plaintiff either personally or by a letter or his certificate. He was also obliged to certify the judge about their publication. (3) A form in Martiall shows what shape this denunciation took.

' We order you therefore and command you, firmly enjoining you that you do not cease from denunciation of all and singular of them as having been and being excommunicate in your parish churches on Sunday and festivals between vespers and other divine service while the greater number of people shall be in them until you have had another mandate from us.' (4)

Here is the account of a return of such letters in the court book.

' On which day hours and place Mr. Standeven introduced letters of excommunication which had formerly emanated from this court with their

(I) Cam. Addit. M.S. 3115 F 4. (2) Bucks. Archd. M.S. d. 4. F 85. (3) Conset Part II Chap. III. Sect. I. (4) Bucks. Archd. M.S. d. 4. F 85.

certificate by which it appeared that these letters of excommunication had been executed against the same William Hayworth in the parish church of Dewsbury in York diocese on the fifth day of February , the Year of Our Lord I575 etc.' (I)

No one who was not in orders was supposed to read an excommunication. The canons of I57I ordered ' that ecclesiastical judges ... are not to excommunicate but to refer the pronunciation of that sentence to the bishop who either shall pronounce it himself or commission ' gravi alicui viro in sacro ministerio constituto,' to do so. (2) The fact that the provision was renewed in I585 and I597 (3) shows that it was something of a dead letter from the first. Not all the judges at York were in orders and in the case of those who were not there is no mention in the court record of any ' grave minister ' being associated with them, while if the Archbishop was to be called to pronounce excommunication he might have sat down in his Consistory place, folded his hands, and done nothing else the whole day long.

According to Conset the defendant should be allowed a day's law before the sentence of excommunication was promulgated in case he made ' a good appearance.' (4) On the whole the judges at York seem to have been remarkably long suffering regarding persons who stood excommunicate. Penalty was often reserved once , or twice , so it may be said that the party concerned usually had a fortnight to make up his mind whether to come in or not before being excommunicated.

(I)'Chancery'Crt. Bk. I575-79 F 45. (2) Synodalia I. II8, II9. Eccles. Comm. Report I883. Hist. App. I. (3) Idem Canons of I585, I597. (4) Conset Part. II. Chap. III. Sect. I.

There are frequent instances of parties being sent a kind of ' last warning' citation , a ' citation to say cause why one ought not to be pronounced as excommunicate.' It seems on the whole unlikely however that this day(s benefit of the doubt was extended to the contumacious person at York as a general rule, as some litigants are excommunicated immediately after the pronouncement of contumacy.

Excommunication was not only imposed for contumacy but might also be decreed against a litigant for refusing to obey the orders of the court respecting the payment of the ' sors principalis ', the matter about which the parties had gone to law, or contumacy fees, or some order of the judge commanding the defeated party to make a fuller answer or to fulfill some direction of the court, to marry for example, if that had been adjudged by the court. Conset says that the denunciation of an excommunicated person during divine service is essential in order that the parishioners may know not to have anything to do with him unless it was with the intention of reconciling him to the church and procuring letters of absolution for him. Those persons who did so were ' ipso facto' excommunicate and had to be cited and have penance enjoined them. (I)

There were other sorts of ipso facto excommunication, deeds which when committed brought on to the head of the offender an automatic sentence of excommunication, for example any persons who disturbed the King's peace, according to Lindwood, were excommunicated by that act. (2) An example of ipso facto excommunication for brawling in a churchyard

(I) Conset Part II Chap. II. (2) Ayliffe. P. 260.

has already been given. (I) Here is an example of a citation sent out against someone who had incurred ' ipso facto'(excommunication. ' Excommunication against someone who solemnises clandestine marriage.

The Official of the court of York to the curate of S. Greetings. Whereas we , proceeding legitimately , pronounced decreed and declared D.J. O. chaplain, to have been and to be excommunicate by our decree, justice demanding it , inasmuch and because the same D. J. O. had rashly and illicitly solemnised clandestine and unlawful marriage between A. B. and M.C. , persons who were not his parishioners, publicly and in the face of the church or, in truth had profaned the marriage service , and had lately incurred a sentence of greater excommunication by the tenor of the provincial constitution which begins ' Humana concupiscencia , etc.' we therefore order you that you denounce him publicly and have him denounced by others as being so excommunicate, citing the same J. S. O. nevertheless peremptorily that he appear before us etc. ...' (2)

Conset remarks. ' In these days the Malice and Contempt men bear towards the Ecclesiastical Jurisdiction is so great that (out of a resolution to protract Suit) they stand Excommunicate sometimes thirty sometimes thirty eight or thirty nine days and then on the fortieth day (to avoid Imprisonment by the King's Writ , de Excommunicato Capiendo, and the expences of Suit they are liable to upon that occasion, being drawn to it by no remorse of conscience) they come and desire their Absolution : boasting that they can have their Absolution before forty

(I) Page I5. (2) Bucks. Archd. M.S. d. 4. F 89.

days be elapsed, paying only Contumacy Fees.' (I) He suggests that the ecclesiastical judges should proceed against them either out of their mere office or at the promotion of the party, and enjoin them penance unless they can give some good reason for standing excommunicate so long. ' These long excommunications ' says Conset ' are great causes of deferring the proceedings and the determination of Causes to the great schndal and contempt of the Ecclesiastical Jurisdiction ; and truly it is an aenigma not easily to be unfolded (Scil.) to determine whether the obstinacy and litigious humour of the Party in Suit is the absolute Cause of this delay or his proctor.' (2)

COMPULSORY ATTENDANCE BY RECOGNITION.

Before going on to discuss further procedure against the contumacious and excommunicate person it might be as well to mention here that there was a form of procedure at York whereby the party might be compelled to appear when called on to do so. An instance of this procedure occurs in the cause of the ' Office of the judge against Elizabeth Atkinson widow and Anthony Atkinson of the parish of Rypon diocese of York. ' they have committed incest together ꝑ he is her late husband's brother's sonne.' ' (3) The two Atkinsons were summoned , Anthony appeared, Elizabeth did not. Then ' because the said Anthony Atkinson, contemning the monition of the judge went away from the city of York, having given and exhibited no replies to the aforesaid articles, and

(I) Conset Part II Chap. 3. Sect. 2. (2) Idem (3) ' Chancery ' Crt. Bk. I575-79.

because the crime if it was committed between the said parties and is true is a horrible one, the judge committed the correction of this crime to the Queen's Lords Commissioners for causes ecclesiastical within the province of York, and he assigned a precept to be made against them to appear before the same commissioners at a suitable and opportune time and place to reply to the premisses. '

Anthony then took a recognisance before the High Commission binding himself to undergo his examination. Afterwards ' when he had been examined the judge enjoined him under penalty of forfeiting his recognisance to appear on Friday next .' (I)

Afterwards Elizabeth also appeared . ' The judge... warned the said Elizabeth to appear personally on Friday in fifteen days after the feast of St. Maurice next in the accustomed hour and place. And the said Elizabeth underwent an obligation (bond) to the sum of £ 40 to appear then ... as appears from the tenor of the said obligation and its conditions.' (2)

Apparently then in difficult causes of this sort, where some heinous crime was concerned , and of course to the Elizabethan church there were few more heinous crimes than crimes of incest, which often consisted merely ins someone having married his dead wife's sister , the High Commission would be asked to make the parties take bond to appear. A method such as this must have been almost entirely effective. Few people would wish to forfeit £ 40, which represented a very large sum in modern terms.

(I) ' Chancery ' Crt. Bk. I575-9 F 104. (2) Idem F II5.

if then the courts possessed an almost infallible method of bringing parties into court and ensuring their attendance why did they not make more use of it, for it was not employed very often ? Surely it can have been only because it was felt that the sanctions in use were sufficiently effective for the purposes of everyday practice.

THE SIGNIFICAVIT.

If nothing else could induce the contumacious person to appear recourse was had to the secular arm. Peter Effard describes the earlier procedure as follows.

' When this letter of aggravation has been duly certified the said proctor ought to appear once more with it before the said Lord Judge and have the said defending party who is excommunicate summoned publicly in the aforesaid form. And if the said defending party does not appear then and there the said proctor ought to say in this form. ' Lord judge, I so and so accuse the contumacy of this R. of K. who is excommunicate with bells rung and a clause of inhibition and other solemnities usual in this part and who has been once more cited and does not care to appear in any way and I petition that your letters aggravatorial and desparatory be directed to the most reverend Father in Christ and Lord our Lord the Archbishop to write to the King's majesty for the taking of the body of the said excommunicate.'

When the letters have been obtained from the said judge by the said acting party (i.e. plaintiff) the same acting party or his proctor

ought to present the same letters to the Lord Archbishop or his Chancellor and when those letters have been seen by the same Archbishop or his Chancellor the same acting party ought to prosecute then and there by letters for the arrest of the person of the said excommunicate directed to our lord the king. When the letters of the Archbishop have been obtained he ought to have the same letters of the Archbishop (conveyed) to the King's Lord Chancellor by any person skilled in the law. When they have been seen by the Chancellor he ought to concede a royal brief called ' Significavit ' directed to the sherriff of the place where the excommunicate lives for the taking of the person of the same excommunicate. When the excommunicate has been captured and put in prison by the officers of this sheriff on the occasion of the premisses the excommunicated person ought (not) to leave prison until he has deserved to obtain the benefit of absolution on this part and satisfy the said acting party about all his expenses made in this party by occasion of his contumacies , to be defined according to the taxation and decision of the judge, andd until he shall have received a fitting penance for his contumacies made in this part.' (I)

It is noticeable that contumacy at this time could not be atoned for by simple payment of contumacy fees, one of those savage penances which are described on various pages of the Cambridge Precedent Book seems to have been usually enjoined. One of them will be illustrated on a later page. It was the exercise of purely physical correction

(I) Cam. M.S. Addit. 3II5 F 239.

which gave its terrors to the sentence of excommunication of the pre-reformation church, and not the religious sanction contained in it. It is well to remember that the penances described in Effard's book for contumacious persons and other offenders often exceed and rarely fall short of what was regarded as the maximum amount of flogging which could be safely imposed on a cavalry trooper in the British Army before the Crimean War.

The contumacious person was given a last warning in the shape of a ' Bracchium Seculare ' or citation to give cause why he ought not to be proceeded against by means of a significavit. Here is an example.

' The secular arm.

The (Commissary of) the Lord Official of the Court of York etc. Whereas so and so stands excommunicate by the authority of the said court, justice demanding it , because of his many contumacies and offences made before us at the instance of so and so, we order you that (you denounce him) as having been so excommunicated, with bells rung etc. inhibiting etc. as above and citing him nevertheless peremptorily that he appear etc. to propose and show reasonable cause if he has any or can say any why the aid of the secular arm ought not to be invoked and the King's majesty be not written to about this arrest as he has wilfully remained excommunicate and under a sentence of excommunication after this publication for forty days and more , with hardened heart, wickedly despising the keys of the church.

And further let him do and receive what justice shall advise , and for the proof of our mandate etc.' (I)

Here is an example of a ' Letter to the Archbishop for the arrest of an excommunicate person ' as it was sent out in Effard's day ; this is apparently the ' Letters desparatory ' spoken of in his treatise.

' To the most reverend Father in Christ and Lord our Lord T. by the grace of God Archbishop of York, primate of England and Legate of the Apostolic See. Your humble and noted orator the Commissary General of the reverend man the Official of your Court of York , with the obedience, reverence and honour due to such a father as your paternity. '

We relate to you by the presents that J. of L. your parishioner, because of his many contumacies together with his manifest offences made before us stands involved at the instance of so and so , in a sentence of greater excommunication by the authority of your said court and has persevered in the same sentence of excommunication for forty days and more being published and denounced as being so excommunicate. Therefore lest he being so excommunicate should taint or stain your lordship's flock with his pestilence we your humble noted (orator) have considered we should implore your paternity that in order to punish the rebellion and insolence of this person J. you would deign to write about the premisses to the King's majesty and act further for the invocation of the secular arm against the aforesaid J. as is incumbent on your pastoral office in this part and the guidance and protection of the church. And may the

(I) Cam. Addit. 3II5 F 2.

Most High preserve your paternity, most reverend to the flock which is committed to your lordship for a further time. Given etc.' (I)

The Elizabethan procedure did not differ materially from what has been described above. After the defendant had stood excommunicate for forty days or more the plaintiff's proctor could secure his arrest by the sherriff of the county. This was done by the proctor coming before the judge and announcing that his master's adversary had stood excommunicate for forty days and asking that the Queen's majesty be written to for the arrest of his body. Here is an example of a proctor making this request in court.

' On the act of excommunication. On which day hour and place Mr. Mason introduced letters of excommunication emanating from this court with their certificate , and then the judge decreed that the Queen's Majesty be written to for the arrest of his person according to the statutes of the realm and the use observed in such cases. ' (2)

This last phrase occasionally varies and is sometimes ' according to the customs of this realm hitherto observed. ' Usually the defendant was given a warning that a significavit was to be issued for him, a citation being sent to him asking why this process should not be made use of against him. This seems to be the equivalent of the ' brachium seculare ' given above, possibly it was identical with it in form.

Here is an example of the 'last warning ' given before a significavit was written for.

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(2) Consistory Crt. Bk. I586-87 F 67. (I) Cam. M.S. Addit. 3II5. F.3.

' On which day hours and place Mr. Standeven introduced letters of excommunication which had formerly emanated from this court with their certificate ... wherefore the judge at the petition of the said Mr. Standeven decreed that the said Mr. William Hayworth be cited to say cause if etc. why seeing he had remained under a sentence of excommunication for forty days and more and still remained in it the Queen's majesty ought not to be written to for the arrest of his person.' (I)

The procedure in obtaining a significavit was as follows. The plaintiff's proctor went to the judge who had granted the letters of excommunication and displayed them along with a certificate giving particulars about the denunciation and alleging that the defendant had stood excommunicate for forty days and more. The judge then decreed a letter ' significatory ' which is ' a Certificate made to the Secular Judges, making mention that the Party certified has stood Excommunicate for forty days and more. The judge then decreed a letter ' significatory ' which is ' a Certificate made to the Secular Judges, making mention that the Party certified has stood Excommunicate above forty days etc. and thence it is called Significatory.' Such is Conset's account, which agrees in the main with procedure at York at this time, except that the certificate probably took the form of a letter. (2)

The insertion of a form of ' Supplication made to the Lord Archbishop that he would deign to write to the King's majesty for the letter which is called ' significavit' to be directed to the sheriff for the

(I) ' Chancery ' Crt. Bk. I575-79 F 45. (2) Conset Part II Chap. 3. Sect. I.

arrest of someone's person,' (I) suggests that the use of ' letters desparatory ' to the Archbishop to obtain a significavit was still in use in Elizabethan times and that in spite of what Conset says a formal letter was despatched to the Archbishop to induce him to permit the issue of a significavit. Here is an example of the ' supplication.'

' To the most reverend father in Christ and Lord the Lord Edward by divine permission Archbishop of York and primate of England and metropolitan maintained by the authority of our lord the King, supreme head of the Church of England and Ireland. Your humble and noted orator George Palmes, doctor of laws, canon of your metropolitical church of York and Commissary and General Receiver of your Exchequer at York , obedience and all the reverence due to such a one as your most reverend paternity.

We intimate to your most reverend paternity by the tenor of the presents that whereas a certain Mr. Robert Robinson of your diocese of York, pretending to be the patron of the vicar of the parish church of Overton of your diocese of York is damnably involved and entrapped in a sentence of the greater excommunication because of his many contumacies and manifest offences made before us at the instance of our office of the Exchequer of Your Paternity, in which sentence of excommunication he has persevered for forty days and more and still perseveres pertinaciously with hardened heart, wickedly contemning and despising the keys of Holy Mother Church, we therefore implore your paternity that you would deign to write to the most excellent King our majesty ... for the arrest of the person of this

(I) Bucks. Archd. M.S. d. 4. F 34.

Robert Robynson according to the rights and customs of this .. realm of England hitherto observed in these causes (as pertains) to the guidance of the subjects of our said Lord the King, so that the malice and insolence of this Robert Robinson be coerced.. so that he whom the fear of God does not recall from evil may at least be coerced by the severity of discipline.

And may the uncreated Trinity preserve you in prosperity for a longer time. In testimony of which thing we have attached the seal of our Commissary 's Office of the Exchequer of York during your good pleasure to the presents. Given on the twenty third day of July etc.' (I)

The letters significatory were sent off under the judge's seal directed to the Chancellor , but were actually dealt with by certain clerks called the ' Cursitors of Chancery .' One of these clerks was assigned for each county, and from them a writ ' de excommunicato capiendo ' was obtained which was directed to the sheriff of the county where the excommunicated person lived. (2) Here is the form of an Elizabethan significavit.

' To the most Excellent princess and Lady our Lady Elizabeth by the Grace of God Queen of England , France and Ireland, and defender of the Faith. Thomas by divine permission Archbishop of York, Primate of England and metropolitan. Greetings in Him by whom Kings rule and princes have dominion.

We make known to your royal majesty and signify by the presents that a certain John Hodgeson of the parish of Bamptonne, diocese of Carlisle

(I) Bucks. Archd. M.S. d. 4. F 54. (2) Conset Part. II. Chap. 3. Sect. I.

and Province of York was laid under and involved in a sentence of excommunication by the authority of our Consistory Court of York, at the instance of Richard Ghibberen gentleman because of his many manifest personal contumacies and offences. In which sentence of excommunication he has persevered for forty days and more and still perseveres with hardened heart wickedly despising the keys of Holy Mother Church. Since then Holy Mother Church has nothing further that she can do in this part we humbly implore your royal majesty and pray that you would deign out of reverence and love of God to write for demand and have executed the arrest of the person of this John Hodgesonne according to the custom of your realm of England hitherto observed in such cases.

And may the Uncreated Trinity preserve your royal majesty in prosperity. Given at York, signed with the seal of the office of our Vicar General in Spirituals which we use in this part. Sixteenth day of Janyary year of Our Lord 1563 and third year of our Translation.

It agrees with (Mark.) Stocke.
the decrees. Notary public.' (I)

Significavits varied somewhat in style, they were issued by other ecclesiastical judges than those at York being sent out for instande by Archdeacons.

The significavits were written on parchment and drawn up by one of the notaries public. They were signed by John Gibson or Robert Lougher the Vicars General and sealed with a variety of seals, usually with the

(I) P.R.O. C. 85 File 190 No. 14.

' seal of the Office of our Vicar General in Spirituals and Official Principal which we use in this part ' or ' the seal of the Officialty of the said Consistory Court which we use in this part.' On one occasion the Official in York attached a slip of paper to the letters significatory giving instructions as to how the significavits were to be made out. It ordered the Chancery Official to make out a writ for a smaller number of persons than had been named in the letters significatory. Evidently some of the offenders had come in. Here is the note.

' To Mr. James.

Salppne.

Maick a wrytt of excommuni capiendo against Fulke Stanley and Anne Corbett onely to the Sheriff of Salop and leave out the rest.

Tho. Metcalfe.' (I)

Apparently Mr. James was the cursitor for that county and it is interesting to see that the officers of the courts of York apparently knew their correspondants in London by name. The cursitors seem to have kept a rought tally of when the writs were sent out on receipt of the letters significatory , and some but not all the letters significatory are endorsed as follows.

' The writ ' de excommunicat. capiendo ' against the aforesaid Fulke and Anne was directed to the sheriff... on the first of Michaelmas the 18th day of November the 24th year of our Lady Elizabeth. Not ohly parties in a suit could be apprehended by a significavit, the note given above, for example , refers to a significavit for witnesses.

(I) P.R.O. File 191 No. 19. Note attached.

The difference in style between different significatory letters has been already remarked. Here is an example of another kind of significavit from the one given above, one which emanated from the Dean and Chapter during the vacancy of the see. It is the letter significatory for Sir Martin Frobisher, apparently the first direct reference to him.

A few words about the circumstances of this letter significatory may not be amiss. On the 30th May I559 according to the D.N.B. ,'that harsh and violent man ' Martin Frobisher had married Isabelle Richyard or Rigyatt of Snaith, the widow of Thomas Rigyatt of Snaith . Between I576 and I578 she wrote to Walsingham as follows.

' In her most humble manner sheweth unto her honour your humble oratrix Isabelle Frobusher the most miserable poor woman in the world that whereas your honour's poor oratrix sometime was the wife of one Thomas Rigyatt of Snathe in the County of York, a very wealthy man, who left your oratrix well to live and in very good state and good portions unto all his children. Afterwards she took to husband Mr. Captain Frobusher (whom God forgive) who hath not only spent that which her said husband left her , but the portions also of her poor children and hath put them all to the wide world to shift in a most lamentable case.' (I) Evidently she had begun a suit against her husband, probably for either restitution of conjugal rights or perhaps for subtraction of a portion . Here is the significavit.

(I) In S.P.D. quoted here from M' Fees ' Martin Frobisher.'

' To the most excellent princess in Christ and Lady our lady Elizabeth by the grace of God Queen of England, France and Ireland, defender of the faith etc. The Chapter of the metropolitan church of York (the Dean being busy in remote parts) to whom all and every spiritual and ecclesiastical jurisdiction which belongs to the Archbishopric of York when the see is filled is notoriously known to belong now that that see is vacant , greetings in Him by whom Kings rule and princes have dominion. We signify to your royal majesty by the presents that we have excommunicated a certain Martin Frobysher of the parish of Snaythe of York diocese at the instance of Isabelle Frobysher his wife. He was implicated in and involved in a sentence of excommunication, in which sentence of excommunication he has wickedly persevered and still perseveres with hardened heart, for forty days and more after its publication, despising the keys of Holy Mother Church. Since therefore mother church has nothing she can do further in this part we humbly implore and pray your Royal Highness that you would deign to write, demand and have executed the arrest of the person of this Martin Frobysher according to the custom, out of your reverence and love of God, and may the Uncreated Trinity preserve your Highness in prosperity. Given at York under our seal which we use in this part, the 20th day of June A.D. 1560.' (I)

ABSOLUTION.

Absolution follows necessarily on excommunication. It is , says Conset, ' a releasing or freeing any one from that penalty which the Law has

(I) P.R. O. C. 85. File 190 No. 4.

inflicted.' (I) Absolutions were of various sorts, absolution ' ad cautelam ' that is provisional absolution , absolute absolution, and absolution after death, for the penalties of excommunication extended to the grave, and elsewhere a description will be given of a riot which broke out when a party of relatives attempted to bury an excommunicated person by force, against the wishes of the parson.

There were various causes which might be urged to the judge in order to induce him to decree absolution ; that the party was unwilling to continue excommunicate, that the judge had no cognisance of the cause in which he had been excommunicated, or that the mandatory had not executed the citation properly. In a case such as this the defendant would be given provisional absolution, until he was able to prove his allegation. (2)

Absolution was obtained by the proctor of the excommunicated person appearing , and after the exhibitiono of his proxy swearing that he believed that his client would obey the law of the church in future and ' stand to the just and lawful Mandates of the Church, ' de parendo juri et stando Mandatis Ecclesie.' (3) The contumacy fees , which were taxed by the judge according to his discretion were then paid to the plaintiff , his proctor or the registrar. When this was done the judge absolved the excommunicate person. Here is an example of a litigant appearing personally in court and asking to be absolved.

(I) Conset Part II Chapter III Sect. 2. (bis.) (2) Idem. (3) Idem.

' On the act of excommunication, a letter of significavit having gone out against Haworth there appeared personally at these hours and place the same Mr. Haworth, cleric, and instantly petitioned that the benefit of absolution be made to him from a sentence of excommunication given against him in this cause in the presence of Mr. Standeven the proctor of the said Molineur petitioning that he be not absolved from the same sentence of excommunication unless he first paid his contumacy fees. ' (I)

An ordinary absolution was recorded as follows.

' On the act of excommunication. On which day hours and place the said Bougham appeared personally and petitioned that the benefit of absolution be made to him from the sentence of excommunication formerly laid on him whereupon the judge at this petition absolved the same Bougham from the sentence of excommunication and decreed to him when he petitioned for them letters testimonials in the form etc.' (2)

Here is an example of an absolution ' ad cautelam .'

' And then the judge at the petition of the said Haworth appearing as above without the revocation of his proctor absolved him provisionally from the sentence of excommunication laid upon him in this cause that is till and during Friday next before the Feast of All Saints and decreed that letters testimonial be made out about this absolution.' (3)

It should be mentioned that the phrase ' without the revocation of his proctor ' was always inserted in cases of this sort where a party put forward a personal petition, otherwise it might be thought that he

(I) ' Chancery' Crt. Bk. I575- 79 F 63. (2) ' Audience ' Crt. Bk. I570-4 F 49 (3) ' Chancery ' Crt. Bk. I575-9 F 63.

had revoked his proctor and was acting for himself.

Absolution could be made to a proctor if his client could not attend court for some reason. The proctor appeared and alleged that his client was detained by infirmity or for some other reasen, and took his oath on this , whereupon the judge absolved him in the person of his proctor.

The Cambridge Precedent Book gives an example of a citation sent out to the adversary on the motion of the proctor whose client was excommunicated and who wished to get his client absolved. How far it was made use of in Elizabethan times is difficult to say, possibly it had ceased to be used by this time.

' Citation to obtain absolution.

The (Commissary) of the Lord Official to the Dean of C. Greetings. Cite etc. that he appear etc. next coming to propose in form of law reasonable cause if he has any or can say any why J. of M. who has been suspended from entrance to the church at his instance , as is said ought not to be absolved .' (I)

The contumacy fees mentioned earlier were the fees which an excommunicated person paid before he was absolved. They were of uncertain amount, depending on the charges that the plaintiff had been put to, although ' it is certain that the Excommunicated Person ought to pay Twopence for every Mile that his habitation is distandt from the place of Judgement, or the court he was to appear in ; yet it is uncertain what charge the Plaintiff may have been at in obtaining Writs in order

(I) Cam. M.S. 3II5 F I5.

for his Apprehension, before he could take the Excommunicate Person, and other charges relating thereto.' (I)

Nobody could be absolved without taking the oath ' de parendo Juri ' and paying his contumacy fees, but some excommunicated persons could not be absolved until they had made other payments. For instance anyone who was excommunicate for not paying the ' sortem principalem ' that is the thing which the judge had decreed that they pay, whether it was legacies, tithes or other things had to satisfy the party or deposit the money with the registrar before he could be absolved. Even if it had been wrongly decreed that the defendant should pay this he was obliged to deposit it with the court and then prove that it had been unjustly adjudged, in which case it would be given back to him. (2)

It was a rule of the Audience or Chancery and the Consistory courts at York that there should not be absolution without payment of contumacy fees. This included of course the expenses incurred by the contumacious person 's adversary and the fees of the letters monitional which had been sent out by the court for the excommunicated person. Such was the case at York, though Conset, in the passage quoted above, hesitates to define what constituted contumacy fees. Here is a passage in the record where the litigant is given provisional absolution on part payment of contumacy fees.

' On which day hours and place Mr. Haworth cleric, appeared personally and instantly petitioned that the benefit of absolution be made to him...

(I) Conset Part II. Chap. III. Sect. 2. (bis) (2) Idem.

in the presence of Mr. Standeven the proctor of the said Molineur petitioning that he be not absolved from the same sentence of excommunication unless he had first paid his contumacy fees, and giving and exhibiting a bill in writing containing in itself, as he said , these expenses. And he petitioned that it be taxed first and that the same Hayworth make satisfaction about this taxation to his master or to him in his name before the benefit of absolution petitioned for was made to him. And then the judge taxed this bill at the sum of £8 XI 6d and warned Haworth to pay these taxed expenses to the party of the said Molineure before the feast of All Saints next , or otherwise to appear on Friday next following at the usual hours and place to hear himself excommunicated in the presence of Mr. Standeven who was silent ' (i.e. he did not dissent from the proceedings) ' The said lord judge conceded to the same Haworth this time for the payment of the said expenses out of his special grace by reason of his poverty. And since the olde style as much of this court as of the Consistory was and is that no contumacious person be absolved from a sentence of excommunication made against him unless he first pays the expenses of contumacy. ' (I)

Once a person had been absolved by the judge letters testimonial were decreed for him. Here is an example from the court record.

' The judge .. absolved him... and decreed that letters testimonial be made out upon this his absolution.' (2)

Here is a form of letters testimonial given by the Bodleian Precedent

(I) ' Chancery ' Crt. Bk. 1575-79 F. 63. (2) Idem.

Book .

' Testimonial of absolution for laying violent hands on a priest. Edward Kellet etc. To the curate of N. and all men. Greetings to all of you. We make known to you by the tenor of the presents that on this day of this present month of August we absolved in form of law and by the authority committed to us in this part the aforesaid W. C. and John K. from a sentence of greater excommunication which they had incurred for the cause related in that they had laid violent hands on the aforesaid Mr. W.C.

Therefore we order you and command you and any of you that you publicly denounce and declare William and John K. to be and have been so absolved and to accept and repute them as such. Given at York under the seal of our office aforesaid etc.' (I)

Here is another example of letters testimonial, where the excommunicated persons has been absolved in his proctor's person.

' Testimonials of absolution from sentence etc.

George Palmes etc. Commissary etc. Greetings in the Lord. Whereas we absolved Mr. R. R. vicar of the parish church of Overton in the person of Brian Lowthe his legitimately constituted proctor who petitioned for absolution in form of law from sentences of excommunication under which he had been laid as much because of his many contumacies made before us as by his not executing by any means our orders legitimately made to him, justice advising it, we will and require you and order you in as much as we can that you denounce and declare publicly in all of your churches that

(I) Bucks. Archd. M.S. d. 4. F I3.

the same Mr. R. R. was and is absolved by us from the aforesaid sentence of excommunication. And certify to us properly what you do in premisses when you have acted rightly in the premisses. Given at York etc.' (I)

Besides the two forms quoted above the Bodleian Precedent Book gives a ' Testimonial of absolution for the effusion of blood,' (2) an absolution for shedding blood in a churchyard and therefore on holy ground.

Here is a form from Peter Effard's book which shows that the easy rendering of contumacy fees was not always the sole punishment of prolonged contumacy.

' Letter of absolution.

The (Commissary of) the Lord Official etc. to such a priest. Greetings . Whereas we have absolved so and so in form of law, justice demanding it form certain sentences of suspension and excommunication in which he stood involved because of his contumacies at the instance of so and so made before us by authority of the said court we order you that you announce him and have him published and announced by others as so absolved when he has performed three floggings (fustigaciones) around the parish church for three festival days in the manner of a penitent. Given at York.' (3) It is worth pausing and noticing what this absolution involves. If the penitent followed the usual procession path round the inside of the church he would be very lucky indeed if he escaped with the equivalent of about twenty lashes for each circumambulation , which would amount to perhaps I80 lashes.

(I) Bucks. Archd. M. S. d. 4. F 76. (2) Idem F I3. (3) Cam. Addit. M.S. 3II5 F I33.

Another form of absolution given by the same precedent book runs as follows.

' Testimonial on absolution.

To all sons of holy mother church T. etc. Greetings in the Saviour of all. Know all of you that we absolved a certain person from a sentence of the greater excommunication in due form of law , in which he was involved by the authority of Lord A. our immediate predecessor on the offer on his part to obey the orders of the church and his humble petition. In (testimony) of which etc. ' (I)

The person who desired absolution might have a significavit out for him, or he might be in prison following his arrest upon one. In this case after the litigant's proctor had obtained absolution for him in the way described above a letter was obtained from the Archbishop , called by Conset ' Letters of significavit ' to the Queen's majesty asking that he might be freed from his imprisonment. An example is given in John Martiall's book.

' Certificate made to the King by the Archbishop for the deliverance from prison (of someone) by reason of a Significavit.

To the most excellent prince in Christ and Lord our Lord Henry VIII etc. Your humble and noted orator Edward etc. licensed (munitus) to exercise spiritual and ecclesiastical jurisdiction within the diocese and province of York by authority of your majesty , wishes daily and continued happiness (to you.)

(I) Cam. Addit. M. S. 3II5 F 2I5.

Whereas we lately had and ordered to be warned John Kay and Ellen Metcalfe, as we are obliged to do by our office, that they should abandon the life which they passed in adulterous embraces , being a hindrance (to their salvation) and that they should submit to penance for their misdeeds from our Vicar General , (and) our Vicar General warned them as is said according to the tenor of our order in our court of York under penalty of law, and they not obeying, excommunicated them in writing because of their contumacies and contempt in this part, and had and ordered that they be denounced and declared openly and publicly in their parish church as excommunicate . They have remained in this sentence of excommunication with hardened heart for forty days and more, despising the ecclesiastical censures whereupon we were compelled to write to your most excellent majesty to certify these contempts for the capture of the said John and Ellen, who by virtue of your most dreaded mandate were captured and imprisoned in the castle of your city of York and at last were brought by the severity of imprisonment to penance and humility and humbly begged to be absolved from the aforesaid sentence of excommunication.

We therefore, mindful that Holy Mother Church never closes the church * to someone returning to it absolved them, John and Ellen from the said sentence of excommunication and had and ordered them to be restored to the sacraments of the church and the communion of the faithful, when they had taken a bond to obey the law. We therefore humbly implore your most

excellent majesty that you would deign to write for the freeing of the said John and Ellen from prison according to the laudable custom of this your ... realm of England used in these businesses. We humbly pray that Immortal God Our Lord Jesus Christ may grant your royal highness daily and continued happiness. In witness of which etc. ' (I)

CHAPTER FIVE. GENERAL PROCEDURE (CONTINUED.)

THE MANNER OF THE DEFENDANT'S APPEARING BY HIS PROCTOR.

Now that procedure undertaken when the defendant had failed to appear has been discussed what took place if the defendant appeared from the first hearing must be considered.

First of all the proctor of the plaintiff appeared and exhibited his proxy for the plaintiff and ' Made his party ' for him, that is announced his intention of acting as his proctor in the cause. He then introduced the citation with its certificate , either ' on the front of it ' or ' on the back.' The defendant was then summoned by the Apparitor General and appeared either personally or by his proctor. Here is an example of the opening of a cause where the defendant appeared on the first hearing.

' On the act of appearance, on which day, hours and place Mr. Lindley alleged that he was the proctor of the plaintiff and introduced the citation with its certificate. When the said defendant had been summoned

(I) Bucks. Archd. M. S. d. 4. F 65.

he appeared personally.' (I) He might also be represented by his proctor. The first act of the defendant's proctor was to ask for a libel to be given him. As Peter Effard says.

' It is to be known that if the cited party appears on the first day of judgement the acting party is obliged by law to give and offer to him the cited defending party a libel in writing if it is asked for.' (2) The proctor of the plaintiff either gave in the libel straight away says Conset, or asked for time to make it ready. (3) According to Effard however the defendant should be dismissed if there was not a libel ready for him. The libel should be offerred ' otherwise the cited defending party ought to be dismissed from the suit and impeachmmnt with a protestation of expenses.' (4) He also implies however that even in his day proctors were beginning to get slack about handing in the libel on the first day of the cause.

' Nevertheless the proctors of the court of York , ' de facto ' even if not by law, and by their own consent take in common the term to libel and give the libel in writing even if the plaintiff does not have the libel ready on the first day of appearance.' (5) Should the libel be ready the proctor gave it in. ' Any acting party ' says Effard, ' who wishes to libel says in this form. ' Lord Judge I, the proctor of so and so libel against so and so in this form.' And he ought to give in his libels , in duplicate and on parchment to the judge. Then the judge ought to give one libel to his registrar and the other to the defending party.' (6)

(I) RAS 60 F 130. (2) Cam. Addit. M.S. F 238. (3) Conset Part II Chap.IV. Sect. I. (4) Cam. Addit. 3II5 F 236. (5) Idem F 239. (6) Idem.

Effard then goes on to describe another part of procedure concerning the libel. ' And after the proctor of the defending party receives the copy of the libel he ought to petition a day and term to deliberate on this libel. And the judge ought to assign to the said proctor of the defending party a term to deliberate on this libel according to the distance of the place and his good judgement. And the same proctor of the defending party ought to petition for his term to deliberate on this libel . In the term to deliberate assigned by the judge the registrar or scribe ought to sign the libel.' (I)

Conset says of this part of the proceedings.

' On the day wherein the Libel is to be given into Court the Plaintiff's proctor ought to exhibit the same , and desire that it may be admitted, and that the Defendant may be assigned to answer thereto (at which time he ought also to give a Copy of his Libel to the Defendant's Proctor) whereupon the Judge admits the same and repeats it in vim positionum etc and assigns the Defendant to answer the same Court day following , and this is called dilatio deliberatoria , being given the Defendant with intent that he may consider whether he will submit or contend. ' (2)

By the time of Elizabeth this assignation to deliberate is not named as such in the record , a note is simply made of the proctor's being assigned to give the libel. Here is an example.

' When the said defendant had been summoned he appeared personally in whose presence the judge at the petition of Mr. Lind assigned to him

(I) Cam. Addit. 3II5 F 239. (2) Conset Part III Chap. I. Sect. I.

to give the libel and to inform about the mandate on Friday next these hours and place.' (I)

' Informing about the mandate ' probably consisted in setting forth the facts of the cause. This assignation to libel was usually for the following court day. Here is an example of the description of the proceedings in the court record.

' To libel and to inform about the mandate. Mr. Lindley has it. Browne was warned etc. On which day hours and place the said Margaret appeared personally and constituted Mr. Lindley her proctor , etc, which proxy Mr. Lindley exhibited and made his party for her and when the said Browne had been summoned he appeared personally, in whose presence Mr. Lindley gave and exhibited a libel with a copy for the said Browne which he handed in, and petitioned that it be admitted. And then the judge at his petition admitted it in so far as it was lawful and assigned to him, Browne to reply to this libel on Friday next after the feast of Holy Trinity next , these hours and places. And Browne was warned to be present then.' (2)

If the plaintiff's proctor did not have the libel ready on the day assigned his adversary was dismissed with expenses. If the libel is not ready says Peter Effard -

' The cited defending party ought to be dismissed from the suit and impeachment with a protestation of expenses . And then the proctor of the defending party ought to say in this form.

(I)RAS 60 F 130. D. & C. 1595-97. (2) RAS 60 F 151.

' Lord judge , as it appears by the certificate that my master has been cited at the instance of such a one , and he does not care to hand over or offer a libel to my said master or to me, I petition that my master and myself in his name be dismissed on this behalf with a protest of expenses.'

And then the judge ought to dismiss the said defending party in the form in which it was petitioned. And then the said proctor of the defending party ought to petition the judge that the said acting party should be warned or cited if he should be personally present or his proctor that he appear on such a day to hear taxation of expenses . And then the judge ought to do as is petitioned.' (I)

Extraordinary as it appears proctors sometimes did not have the libel ready in time, probably because of the fact that they most of them had more clients than they well knew what to do with. Here is an example. ' On which day, hours, and place Mr. Farcher petitioned that he or his master be dismissed with expenses. And then the judge dismissed the defendant from this instance with expenses since the plaintiff had neglected to exhibit a libel, and he condemned the plaintfff in expenses and assigned to Mr. Farcher to exhibit a bill of expenses. ' (2)

The defendant might make exceptions to the admission of the libel for a variety of reasons ; that the judge was incompetent, prejudiced, etc. or because the adverse party was not a fit person to stand in judgement, being excommunicated or having some other bar against him or

(I) [illegible] Cam. Addit. M. S. 3II5 F 239. (2) Consistory Crt. Bk. I586-87 F. 4.

that he had not constituted his proctor properly , or that the libel was obscure or indeterminate. In this case the judge assigned a term probatory to prove the allegation and the reply was in writing. (I)

An example of an exception against the plaintiff as an excommunicated person occurs during the Underne c. Lowth cause, and it is met by a counter allegation. Lowth's proctor alleged that Underne was under a sentence of excommunication before the cause began, and therefore Archdeacon Lowth need not reply to Underne. The adverse proctor accepted the allegation in as much as it made for the party of his client and not otherwise nor in any other way, and excepted further about the insufficiency of this allegation because it had not been alleged that any sentence of excommunication had been given in writing nor had any just cause of excommunication been alleged. He further excepted against the insufficiency and incompetence of the jurisdiction which had given the sentence of excommunication because the Archdeacon did not have power to punish any clerical offences within the diocese of York and Underne was a cleric. He therefore petitioned that the allegation should not be admitted but rejected. A term was assigned to prove the allegation. (2)

THE LIBEL.

The word ' libel ' is said to have been derived from ' libro ', that is a little book. It somewhat resembled a small book, as it was a sheet of paper folded book-wise. ' But properly in this argument ' says Conset ' a libel is taken for a Writing which containeth the action.' (3)

(I) Hockaday. P. 249. (2) 'Audience ' Crt. Bk. 1570-75 F 57. (3) Conset Part III Chap. I. Sect. I.

Conset devoted a special monograph to the proper drawing up of the libel, and the finer points of the procedure may be found there. (I) He complained that the lawyers of his day were incapable of drawing up a proper libel. Although libels were drawn ' according to the style and custom of every Court ' (2) every well drawn libel ought to contain certain things, which are expressed in the following rude distich.

'Each Plaintiff and Defendant's Name,
And eke the Judge who tryes the same ;
The thing demanded, and the right whereby.
You urge to have it granted instantly ;
He doth a Libel right and well compose,
Who forms the same, ommitting none of those.' (3)

Libels are generally both too long and too particularly concerned with the circumstances of the cause to be quoted with much value, but here is what John Martiall felt was a properly framed libel.

' Libel in a matrimonial cause.

In the name of God. Amen. The party of the honest man William Mamonde, of the parish of Kildewick , York diocese says alleges and propounds in law in these writings jointly and separately as follows, before you the venerable man the Lord Official of the Fair Court of Consistory of York or (his) commissary or any competent judge in this behalf against and opposed to Elizabeth Mydgely of the parish of Halifaxe of the said diocese of York and against anyone on her behalf who intervenes legitimately in judgement.

(I) Conset Part III Chap. I. Sect. I. (2) Idem. (3) Conset P. 403.

First. He puts forward and articles that the said William and Elizabeth being free and unattached from any matrimonial contract contracted true, pure and certain and legitimate marriage in the months of September, October, November, or December, in the year of Our Lord 1540 or one or any of them, by the present words proper to this , or at least contracted betrothal by words expressing their mutual consent for the future , that is to say the said William saying ' Here I take the Elizabeth to my wif and thereto I plight the my trothe.' and the said Elizabeth replying at once ' And here I take the William to my husbande and thereto I plighte the my trothe .' And they joined hands and kissed ... perhaps other words were used but to a similar effect and with the same import.. to be specified in the eventual issue of this cause . And he propounds (these things) jointly and separately and any of them.

Item. He propounds and articles that the aforesaid Elizabeth Mydgely did, as much in the presence of the said William Mamonde as out of it say and recognise that she had contracted marriage with the aforesaid William in diverse places and at divers times, and he propounds jointly and separately (these things) and any of them.

Item. He propounds and articles that the said William Mamonde gave , conferred, and presented to the same Elizabeth some gifts or presents in token of and corrobation of this marriage, and he propounds (these things) jointly and separately and any of them.

Item. He propounds and articles that the said Elizabethe wished to

gives and offerred to the aforesaid William before the aforesaid marriage contract ' certeane golde and silver if he would have bene contented to have challenged no matrimonye of her.' And he propounds as above *

Item. He propounds of and about all and singular the premisses there is a public voice and fame within the diocese of York. And he propounds as above.

Whereupon, the party of the said William Mamonde, having made oath about the premisses petitions that right and justice be done and ministered in all and singular the premisses and that Elizabeth Midgely be adjudged the legitimate wife and spouse of the said William and the aforesaid William Mamonde the husband and spouse (of Elizabeth) and that the said Elizabeth be coerced, compelled and forced to solemnise this marriage in the face of the church as the manner is, with the aforesaid William, and that it be decredd, pronounced and declared by you and your definitive sentence , lord Judge aforesaid. All of which the party of the said William propounds and petitions may be done, jointly and separately not obliging himself to prove all and singular the premisses nor to the burden of a superfluous proof, against which the party protests , but that so far as he shall prove the premisses so far he may obtain therein (the benefit of the law being always reserved) humbly imploring your office lord judge aforesaid. ' (I)

(I) Bucks Archd. M. S. d. 4. F 29. * ' before ' translates ' citra ' which might mean ' against ' or ' thereabouts. '

CONTESTATION OF SUIT.

When the libel was admitted and delivered to the adverse party and the preliminary objections of the plaintiff had been disposed of the cause had arrived at the stage known as contestation of suit. The proctors were now lords of the controversy and could substitute another proctor. (I)

The contestation of suit, ' contestatio litis ' was the ' Principium Formale or Fundamental Judicial Act, whereby the Judge begins to take cognisance of the cause, being made by a narration of the principal business (on the plaintiff's part) propounded in law and by a Contradiction or an objective answer following it , on the part of the Defendant.' (2)

The proctor seems to have given utterance to the matter contained in his libel at this point , if he had not done so before, probably expanding it and touching on the more important points of the cause.

There does not seem to have been any definite rule about this however, as proctors' ' pleadings ' might occur at later stages of the cause. One pleading , that concerned with the election of a parish clerk to Driffield church, has been already given in the first chapter. (3) It occurred on ' the acte of appearance ,' that is on the first court hearing.

On the day assigned by the judge to answer the libel , the end of the ' term to deliberate ' described by Peter Effard, the plaintiff or his proctor requested an answer from the defendant. The defendant could either reply affirmatively, that is admit that the things alleged in the

(I) Hockaday ' Gloucester Consistory Court ' page 250 Trans. Bristol and Gloucester Arch. Soc. 1924. (2) Conset Part III Chap. III. Sect. I. (3) Page 7.

libel were true and submit himself to the taxation of expenses by the judge, ' which often falls out in causes of defamation ' (I) says Conset, (The reason for this, which Conset omits to give is rather interesting. As there is little pleasure in defaming someone unless except before an audience of some sort, the necessary two witnesses to prove the cause can usually be produced,) failing this the defendant might admit that the matters alleged in the libel were true in part and add facts which the plaintiff had not mentioned in order to show that he was not really an offending party, or else deny the libel outright. (2)

Effard comments on affirmative contestation of suit as follows. ''If suit is contested affirmatively as to the libel by the defendant then the proctor of the defendant ought to say and contest suit in this form. ' I believe that the things narrated are true as they are narrated and therefore the things petitioned for ought to be done as they are petitioned for. ' And the acting party ought to swear first as is contained above in the oath of the acting party.'' (3)

Here is his account of negative contestation of suit, when the proctor denied absolutely that the libel was true.

'' If the defendant is replying negatively to the libel then the proctor of the defendant ought to say, in letters, in this form.

' As to the libel I say that the things narrated as they are narrated are not true and therefore the things petitioned for ought not to be done as it is petitioned.' (4)

(I) Conset Part III Chap. III Sect. I. (2) Idem. (3) Cam. M.S. Addit. 3II5 F 240.

(4) Idem.

If a proctor denied the libel he must protest ' against the generality ineptitude , obscurity and undue specification of the libel,' (I) and must also protest that the matters contained in it were not true as they were related, as Effard instructs him to.(2) Here is an example of a proctor protesting against the libel.

' On which day hours and place Mr. Farley protested against the too great generality , obscurity and absurdity of the libel, and saving this protests, contested suit negatively, saying etc. ' (3)

After he had doen this the plaintiff alleged that his libel was in articles and therefore he desired that the judge might repeat it in full force of the positions and articles. The judge accordingly did this and submitted it ' salvo jure impertinentium et non admittendorum etc.' (4) that is saving the right of things not belonging to it and not to be admitted. When the libel had been admitted the plaintiff asked that the defendant's proctor should reply to the positions of the libel. Here is an example of the procedure described above.

' To reply to the libel, Mr. Browne has it, on which day hours and place the said Browne appeared personally and contested suit negatively, saying etc. in the presence of Mr. Lindley repeating the libel in force ; when it had been so repeated in force the judge tendered a corporal oath to the said Browne to reply faithfully to the positions of the libel, When (the Evangels) had been touched , at the petition of Mr. Lindley, and he, Browne , was warned to exhibit his replies on Friday next , and was warned to be present then.' (5)

(I) Conset Part III Chap. III. Sect. I. (2) Cam. M.S. Addit. 3II5 F 240. (3)RVII A F I09. (4) Conset Part III Chap. III. Sect. I. (5)RAS 60 F I32.

The defendant's proctor's reply to the positions of the libel was that he did not believe the positions to be true. The plaintiff's proctor then protested that he thought that he might be better relieved by the personal answers of the defendant than those of his proctor, and asked that the judge decree him to be cited at some convenient day to answer personally to the positions of the libel. (I) The judge decreed accordingly. This was the decree for the principal party (that is the defendant) to answer. Here is an example of a proctor petitioning for this decree.

' The positions and articles of the matter were replied to by the proctor. On which day hours and place Mr. Farley alleged that he believed that his master would be better relieved by the replies of the party... than his proctor's , and when Mr. Farley had made oath... the judge at his petition decreed a citation.' (2)

The citation which the judge decreed was a special citation which might be extracted to make the defendant answer. (3) Here is an example of a citation of this sort from the Cambridge Precedent Book.

' Citation to reply to the libel.

The (Commissary of) the Lord Official to the Dean of D. and R. O. of E. our sworn messenger in this part and also to all and singular rectors, vicars, and chaplains, curates and those not curates and notaries publica and clerics whomsoever wherever constituted throughout the city and diocese of York. Greetings in the Author of salvation.

(I) Conset Part III Chap. I. Sect. I. (2)RAS 59 F I4. (3) Conset Part III Chap. I.

We order you and any of you and firmly enjoin you that you cite or one of you cites peremptorily the honourable man B. of S. when you have been duly and properly asked to do so in this part, that he appear before the said Lord Official or us etc. next coming to reply to the libel judicially handed in in a certain cause which is depending before us in the said court (and has been) for a certain time between so and so on the one part and the aforesaid R. of S. on the other part. And for the proof of the making of this citation certify the said Lord Official or us at the said day and place or let he who received our present mandate so certify by his or your letters patent containing the purport of these things with any authentic pendant seal or the seal or subscription of any notary public joined to it. Given etc. ' (I)

The defendant dissented from this decree for the principal party to answer and petitioned that a term be assigned to the plaintiff to prove his libel.(2) This petition is described by Peter Effard as follows. ' And the plaintiff straightway petitions for the term to propound and make first production, if he wishes this term, and the proctor says in this form.

' Lord Judge I petition for such a day to propound and make first production.' (3) This term to propound and make first production is the old equivalent of the term to prove the libel at York. As will be seen it varied little except in name. The term to prove the libel lasted three, four, or more court days, according to the distance from the

(I) Cam. Addit. M.S. F. II. (2) Gonset Part II Chap. II. Sect. I. (3) Cam. M.S. Addit. 3II5 F 240. (

court of the place where the plaintiff lived and on the importance and difficulty of the cause. (I) Here is an assignation to prove the libel. ' Browne was warned to undergo an examination on the positions of the libel before this day, on which day, hours and place the judge at the petition of the said Browne assigned to Mr. Lindley to prove the libel on Friday next in this place. And further the judge at the petition of Mr. Lindley warned the said Browne to be then present.' (2)

To revert once more to the decree for a personal answer, Conset says that ' in causes of Defamation the judge is not wont to Decree that the Principal party be cited to appear until after the Depositions of the witnesses are published. ' (3) This was, as Hockaday points out, because no one was forced to incriminate himself. (4)

THE OATH OF CALUMNY.

The oath of calumny was administered immediately after contestation of suit. Peter Effard shows the sequence of procedure.

' If the defendant is replying negatively to the libel etc... And then incontinently the proctor of the plaintiff ought to swear on God's Holy Evangels , touching them corporally, in this form of words.

' I believe my master has a just action and if I produce witnesses they shall be good and legal ones and I shall tell the truth so often as I shall be asked to do so, so help me God and these his Holy Evangels.'

Then incontinently the proctor of the defendant ought to swear in this form. ' I believe that my master has a just defence, and if I

(2) RAS 60 F 132. (1) Conset Part II Chap. II. Sect. I. (3) Idem. (4) Hockaday. ' Gloucester Consistory Court,' P. 252.

(produce) any witnesses etc. as is contained in the oath (made) by the said acting party.' (I)

Conset says that there were two forms of this oath of calumny, the general oath, which was only taken once after suit was contested, and the special oath which is also called the ' oath of malice ' which might be administered to either party as often as the judge saw fit, and in any part of the proceedings. ' (2)

If the plaintiff refuses this oath of calumny he is to desist from further prosecution of his action and if the defendant refuses it he is to be condemned as confessing the charges against him. (3) Here is a citation ordering a party to take the oath of calumny.

' Citation to take the oath of calumny.

The (Commissary of) the Lord Official etc. to the Dean of C. Greetings. Cite peremptorily or have cited so and so that he appear etc. on such a day next coming to take the oath of calumny and of telling the truth personally in a certain cause which is pending between J. of V. on the one part and J. of N. the defendant on the other part, according to the quality and nature of this cause, and further let him do and receive what justice shall advise, and for the proof of the citation etc. Given etc. ' (4)

' If these Oaths were duly Administered ' says Conset ' there would not be so many shameful delays in the Causes as there are, seeing nothing is more ordinary in these days than for a Cause to depend ... for sometimes three, four, five or six Court days ; nay sometimes for two or

(I) Cam. Addit. M. S. 3II5 F 24I. (2) Conset Part II Chap. II. Sect. 3.
(3) Idem. (4) Cam. Addit. M.S. 3II5 F I3.

three Terms, putting it off with the same dependance, from one day to another, to the great prejudice of the Parties, who complain exceedingly of these abuses, pretending (justly) they never knew any end of their business after it comes into these Courts ; ' (I) This was a complaint that might have been made by a large number of litigants at York also.

ADDITIONAL ALLEGATIONS.

The suit was now contested and the parties were ready to proceed to proof. The plaintiff had the right to put in not only one, but three allegations ' each supporting and strengthening the preceding. ' (2) Everything said about the libel applies equally to the other two allegations. It is interesting to note that the number of these allegations , concerning which Oughton remarked ' When the custom of putting in these additional allegations originated we know not,'(3)is already confined to three at the time of Effard's treatise. Here is his comment.

' And it must be known that the acting party in any cause can have three terms if he wishes them to propound articles and produce his witnesses in which and in any of which he can propound articles, or produce his witnesses, viz. the first, second, and third .' (4)

The form in which these additional allegations as well as other matter propounded was made is given by Effard.

' If any proctor of the one party or the other propounds or exhibits anything in writing, a libel, exceptions, positions or articles or anything

(I) Conset Part II Chap. II Sect. 3. (2) Idem. (3) Law. P 79. (4) Cam. M.S. Addit. 5II5 F 24I.

else in writing the proctor says in this form for the greater part.

' Lord judge I propound and exhibit as is contained here.' (I)

These additional positions are variously described as ' matter,''positions', ' articles ' and ' additional allegations '. The party against whom they were offerred was obliged to reply to them personally on oath. Here is an example of a proctor giving in additional positions.

' On which day, hours and place the said Browne gave in matter in writing with a copy to Mr. Lindley which he petitioned should be admitted in the presence of Mr. Lindley petitioning that it be rejected . And then the judge at the petition of the said Browne decreed the said Margaret to be cited to reply personally to the positions of the said material towards this day in a fortnight, these hours and place.' (2)

The personal reply of a party to the positions of a libel or an allegation, which is referred to here , will be dealt with in the following section.

Just as there was a term to prove the libel, so there was a term assigned by the judge to prove the additional allegations. Here is an example.

' The judge at the petition of Mr. Lindley assigned to Mr. Fothergill to prove the matter on the same day and place.' (3)

It would be of no purpose to describe in further detail the procedure with regard to additional allegations for as Law puts it - ' whatever has been said hitherto of the one libel must be considered as applying

(I) Cam. M.S. Addit. 3115 F 241. (2) RAS 60 F. 139. (3) Idem.

to each of these three when they are put in.' (I)

The citation which called the adverse party to answer positions when they had been handed in must now be noticed. Here is an example from the Cambridge Precedent Book.

' Citation to reply to positions.

The Lord Official etc. to the Dean of C. etc. Cite peremptorily C. of C. that he appear before etc. on such a day next coming to reply personally to the positions in a certain cause which J. of H. is moving and prosecuting against him in the court of York judicially handed in on the part of the said J. etc. And for the proof etc. ' (2)

Not all positions which might be handed in had to be replied to as some of them might be criminal and such as would force a party to answer to things which might incriminate him, and which did not concern the libel. The following citation seems to have been issued in cases where the reply to positions was optional.

' Citation to reply to positions with the consent of the proctor.

The Lord Official of the Court of York etc. to the Dean of C. Greetings. Cite peremptorily J. of V. that he appear etc. on such a day next coming to reply personally to positions in a certain cause before us in the said court between so and so the plaintiff on the one part and so and so the defendant on the other part, moved and pending undecided which have been handed in for the part of so and so with the consent of his proctor etc. And for the proof etc. ' (3)

(I) Law P. I80. (2) Cam. M.S. Addit. 3II5 F I4. (3) Idem.

THE PERSONAL ANSWERS OF THE DEFENDANT.

The citation for the party to answer personally is brought into court on the appointed day with a certificate endorsed on it. If the defendant did not appear his contumacy was accused, as is described elsewhere.

If the defendant appeared the plaintiff asked the judge that he might be sworn to answer faithfully to the positions of the libel. The defendant laid his hand on the Evangels and took the following oath which is reproduced from Conset.

' You shall swear that (having removed and laid aside all manner of Affection, which you in any way bear to your own Cause) you will faithfully and truly answer to the Positions of the Libel, given into this Court against you, by such a one, in such a Cause, touching your knowledge in such things as concern your own proper Fact, and touching your credulity in such things as concern your own proper Fact, and touching your Credulity in such things as concern the Fact of someone else. So help you God. etc. ' (I)

This probably approximated in effect to the similar oath taken in York. Here is an example of a defendant taking oath to reply to the positions of the libel.

' A citation was decreed for the party (to reply to) the libel or articles on which day hours and place Mr. Foster introduced a citation with its certificate and when the defendant had been summoned the judge

(I) Conset Part II Chap. II Sect. 3.

at his petition charged him with a corporal oath to reply faithfully to the positions of the said libel or articles, when (the Evangels) had been touched , in the presence of Mr. Foster protesting that if etc.' (I)

When the oath had been taken the plaintiff asked the judge to decree that the defendant be examined upon the positions of the libel on the next court day. This examination was not recorded in the court book, it took place before the registrar. If the defendant refused to take the oath to answer the libel he was to be admonished to take the oath several times, and denounced as excommunicate if he did not. Sometimes the monition to undergo examination is recorded in the court book. Here is an example.

' The defendants appeared personally and the judge at the petition of Mr. Farley charged them with a corporal oath to reply faithfully to the positions of the libel when the (Evangels) had been touched and they were warned to undergo examination before Tuesday next in eight days etc. ' (2)

At York this monition was frequently accompanied by an admonition from the judge to the defendant that he was not to leave the city before he had undergone his examination.

It seems likely that there would be some cases where the defendant could not reply personally. He might be living a long way from York or engaged in some service of the Queen's. In this case the proctor took upon himself to answer to the positions and articles of the libel on his

(I)RAS 60. F I2. (2) Consistory Crt. Bk. I586-7 F23.

client's behalf as his proxy allowed him to . He would of course correspond with his client . Here is what seems to be an example of a personal answer by proxy, if it can be expressed in that way.

' To hear the will of the judges about the decree of citation etc. On which day etc. the judge at the petition of Mr. Stocke loaded Mr. Standeven with a corporal oath to reply faithfully to the positions and articles of the libel offerred in this cause according to the instructions given or about to be given him, (the Evangels) having been touched etc. And he was warned to exhibit his replies in writing on Friday eight days after Whitsun . ' (I)

If the plaintiff 's proctor felt that the answer of the defendant was not sufficiently full he might ask that the defendant be called to answer more fully. For instance in the cause of Cole c. Lord Ewre, Cole's proctor petitioned that his adversary should make a fuller reply or be professed to have confessed. (2) If the judge decided that the answer was not full enough he might decree as petitioned or appoint a day to hear what the defendant had to say in excuse. This is what occurred in the above mentioned cause. Mr. Stocke, Lord Ewre's proctor, alleged that ' the said Lord Ewre willed the said Mr. Stocke to deliver unto him the said copie of the said libell with the answeres in this behalfe thereunto made , the which he delivered accordingly , sence which time the said Mr. Stock hath not receyved any answeres or instructions from the said L. Ewre nowe being at London what to answere more fully or playnly

(I) ' Audience ' Crt. Bk. I570-74. (2) Consistory Crt. Bk. I586-7 F 3.

to the same articles.

And that the said L. Ewre by writt or other comt. (commitment ?) is now attending on hir majestie in hir high court of parliament about the affaires of the common welth of this realmm ' Stook offerred to take oath upon this. ' Wherefore he petitioned that a competent term be assigned to him to exhibit fuller and more detailed (planiores) replies to certain positions of the said libel in the presence of Mr. Fothergill petitioning as before and also protesting about the insufficiency of the aforesaid allegation and petitioning that the party of the said L. Ewre be condemned in expenses by reason of a retarded process. And then the judge assigned to Mr. Stocke , when he had taken oath about the truth of his aforesaid allegation and had touched (the Evangels) to exhibit fuller and plainter replies to the said positions of the libel this day in a month's time etc. ' (I)

Expenses of a retarded process were incurred when a proctor had proposed any defensive matter, such as an allegation and had had a time assigned to prove it , but had not succeeded in proof. It was held that the progress of the suit had been delayed , in as much as the adverse party had not been able to apply to the court in order to bring the causee to a conclusion. (2) If the adverse party failed in proof after the end of the term probatory which had been assigned to him his opponent alleged that he had failed in his proof and that the proceedings of the suit had been retarded, and therefore prayed that the party be condemned in the costs of a retarded process and that right and justice be done.

(I) Consistory Crt. Bk. I586-7 F I9. (2) Law P. 286.

and administered.

If the judge thought good he condemned the party in the costs of the retarded process as was requested and taxed a schedule of expenses which the adverse proctor produced. (I)

If a party had been asked to make a fuller reply , as in the case above and had no reason to give as to why he did not answer more fully he would be compelled to answer fully on pain of being declared as having confessed.

CITATION OF WITNESSES.

If the defendant did not confess to all the charges laid against him by the plaintiff the plaintiff had to produce witnesses to prove his libel or ' intention.' These witnesses might be quite willing to appear, on the other hand they might live in the next county and be very unwilling to make the journey to York, especially in harvest time. If it was thought necessary, the witnesses were cited. Here is what Effard advises.

' And if it happens that the witnesses of the acting party wish to appear of their own desire and without compulsion the proctor will see that these witnesses are asked for in every way before the first or second production with the viaticum offerred, to appear before the judge in this part on the first or second production to give witness of the truth in this cause. And the cautious proctor will not by any means

(I) Law. P. 286.

wait for the end of the term to produce or recall the witnesses to be compelled.' (I)

Here is an example of a citation for a witness from the Cambridge Precedent Book.

' Citation to bear witness of the truth.

The Lord Official etc. Cite etc. T. of A. etc. to bear witness of the truth in a cause which J. of M. is moving and prosecuting against V. L. before us in the said court, and to do etc. ' (2)

If the witnesses did not appear in answer to this citation the proctor had to get ' Letters compulsory,' decreed against the witnesses he wanted to call. In this case Effard says -

' The aforesaid proctor of the acting party ought to appear before the judge at the term for which these witnesses were called with the names in writing and in duplicate and ought to say to the judge in this form.

' Lord judge these witnesses whose names are inserted here are for the party and on the party of my master, they have been asked in form of law to bear witness in form of law.' Then when the proctor of the plaintiff has made oath on God's Holy Evangels about the mandate to the judge then the same judge decrees the compulsion of these witnesses who have been asked for as is said, for the day which the letter gives.' (3)

These letters compulsory were a special citation compelling witness-

(I)Cam. M.S. 3II5. Addit. F 24I. (2) Idem F. I5. (3) Idem. F 242.

es to appear. Here is an example of a proctor asking for letters compulsory for witnesses whom he wishes to call.

' On which day, hour and place Mr. Foster alleged that Elena Doddesworth gladay, , Elizabeth, Edward, and John Backhous were necessary witnesses for his part and that the said Elena was asked for and did not come.. wherefore he petitioned that the said witnesses be compelled to appear to give testimony about the said libel on Saturday next.' (I)

It was usual at York to prorogue the term probatory until the witnesses arrived, and this was done in this instance. Often these letters compulsory had to be renewed, either because the witnesses did not want to appear or because they were being kept back from appearing in some way by the adversary. Here is an instance of witnesses for whom compulsories had been sent out refusing to appear.

' On which day hours and place Mr. Farley introduced letters compulsories with the certificate etc. by which it appeared that the said witnesses had been asked for but not found, whereupon the judge at his petition decreed the said witnesses to be compelled to bear witness etc. (about the positions of) the said libel.' (2)

If an ordinary letter compulsory failed to produce results a compulsory by ways and means was sent out to make the witness come forward. Here is an example from the court record.

' A compulsory was decreed for Elizabeth Edwardes (personally) otherwise by ways and means to give testimony etc.' (3)

(I) Consistory Crt. Bk. I586-87 F 32. (2) Idem F 26. (3) Idem F 47.

If witnesses did not appear upon a compulsory they were pronounced contumacious and excommunicated, as happened in the cause cited above. (I) Peter Effard describes the process in these words.

' When this compulsion or citation of these witnesses has been obtained these witnesses ought to be cited for this day contained in the said letter. When this day arrives and this letter has been duly certified, if the witnesses cited do not care to appear then the same proctor of the acting party ought to accuse the contumacy of these witnesses and the judge decree execution of suspension against them and do totherwise as is plain in the form.' (2)

Here is an example of letters compulsory, taken from the Bodleian Precedent Book.

' Citation to bear witness of the truth. This is a compulsory. The (Commissary) of the Official to the curate of A. Greetings. Cite peremptorily W. T. your parishioner that he appear etc. on Teusday next after the date of the presents to bear witness of and speak the truth which he knows or has knowledge of in a certain matrimonial cause moved and pending undecided in the same court between John T. and Anne Marshall and further let him do and receive what shall be just . And (certify us) what you do in the premisses etc.' (3)

TERM PROBATORY.

As reference has been made more than once to the term probatory it will be as well to give some explanation of it here. It is, says Conset,

(I) Consistory Crt. Bk. I586-87 F 47. (2) Cam. M. S. Addit. 3II5 F 242.
(3) Bucks. Archd. M. S. d. 4. F I5.

' that time or delay which was given to the Plaintiff wherein he might prove what he Pleads or Sueth for ;' (I) During this time the plaintiff had to produce his witnesses and hame them examined. He also produced any written evidence or other documents. The term was common to both parties, that is if either party did not wish to use the term they could renounce it either in whole or in part and the other party might claim the use of it. The defendant was assigned a similar term probatory for proof of his defensive matter. (2)

PRODUCING WITNESSES BEFORE A COMMISSION.

An act in procedure which took place at the same time as the request for letters compulsory was the obtaining of a commission to examine witnesses, should such a commission be necessary. It must be remembered that the provincial courts of both provinces were not really placed centrally in the provinces ; witnesses might be unable to make the long journey to York, while winter and the foul roads seem to have shrunk even the number of ordinary litigants for part of January and Februayy in every year.

Accordingly Conset puts the two reasons for asking for a commission as the remoteness of witnesses from the court and their sickness, which demanded a ' subsidium legis ' or aid to the law. (3)

Commissions were either such as immediately authorise the commissioners, that is where the witnesses live in the jurisdiction of the judge granting the commission, or such as mediately authorise them, that is where the witnesses live outside the authority of the judge. This sort of

(I)Conset Part III Chap. IV. Sect. 2. (2) Hockaday ' Gloucester Consistory Court.' P. 257. (3) Conset Part III. Chap. IV. Sect. 5.

commission was called ' sub mutue vicissitudinis obtentu.' (I)

The party who intended to use witnesses who lived under another jurisdiction had to allege to the judge that they were necessary witnesses and that they lived in another diocese and ask that a commission be decreed for the enlargement of his authority and for a supply of the law to the Bishop in whose diocese the witnesses live , or to his Vicar General, and that they might be requested to compel the witnesses to appear. The judge decreed this and prorogued the term probatory until the day assigned to transmit the commission. The witnesses then appeared before the commissioners and were examined by them ; a notary public and the proctor who had requested the commission were in attendance. (2)

The adverse proctor objected to these proceedings and might also annex interrogatories to the commission, upon which the witnesses were to be examined. These interrogatories ought to remain sealed until the commission had been read. (3)

It is useful to compare this account with what Effard has to say about commissions.

' And it must be known that if the witnesses produced by any proctor are abiding in another diocese, remote, and out of the jurisdiction, and if these witnesses are old or sick and cannot go (laborare) easily to the judgement aforesaid or if they are women, noble persons, or people constituted in some dignity, then the party producing them ought to propound a mission in writing to petition for a commission of the

(I) Conset Part III Chap. IV. Sect. 5. (2) Idem. (3) Idem.

judge to be directed to any person skilled in the law to examine these witnesses and admit them in form of law in a certain form in the parts where these witnesses live. And after these witnesses have been examined by the commissioner in this part to whom the commission has been directed the same commissioner ought to certify in the way and form demanded in this his commission and ought to transmit the attestations and depositions of the witnesses in these parts examined by him in this part, closed and included in his certificate, to the first judge before the day contained in his commission. When this day arrives the proctors in this cause ought to petition the judge that his Certificate be opened and they ought to petition for the publication of the attestations and statements of the said witnesses and copies of them and the party ought to petition for the term to speak against these witnesses and their statements if he wishes it and further he ought to proceed in everything as is mentioned above. ' (I)

Once granted a commission might be renewed for a variety of reasons. The procedure followed during the execution of a commission is indicated by the record of the proceedings of a typical commission which is given below. It is enough to say here that the witnesses appeared before the commissioners and a notary public with the proctor who had obtained the commission or his client or substitute in attendance , and the proctor then presented the commission and asked that it should be proceeded upon. The commissioners read it and took upon themselves the execut-

(I) Cam. M.S. Addit. 3II5 F 243.

-ion of the commission. When it had been executed the notary public drew up a certificate concerning the commission. This contained a full account of all the proceedings and was subscribed and sealed by the notary public. Each leaf, says Conset , ought to be subscribed by the witnesses and commissioners. This was not always done at York , but it was probably the result of negligence rather than a variation from normal procedure, only another indication that differences in the forms of documents must not necessarily be put down to a different method of doing things. (I)

Here is the record of the request for and sending out of a commission. ' On which day, hours and place Broket alleged that William Vavasour of Acaster Malbis, gentleman , was an extremely necessary witness for his part, and that he did not dare to come to this court because of a process in the temporal court. Therefore the judges at the petition of Mr. Broket and with the consent of Mr. Fawcett, decreed a commission to be made into these parts for the examination on oath of the said Vavasour on the allegation and schedule thus put forth on the part of Elles.' (2)

' And further the judge, at the petition of Mr. Broket and with the consent of Mr. Fawcett renewed the letters commissional formerly decreed in this part for the reception, admission, swearing and examination of William Vavasour by William Felotson cleric, a commissioner formerly nominated in this part on Thursday next between the hours of nine and eleven before noon of this day in the house of the said Vavasour and the said Fawcett was warned further at the petition of Mr. Fawcett (miss-print

(I) Conset Part III Chap. IV. Sect. 5. (2) ' Audience ' Crt. Bk. 1570-74.

for Broket) and the judge warned him that Vavasour was to be examined on interrogatories ministered to him.' (I)

Here is an example of a commission from the Cambridge Precedent Book.

' Commission to examine witnesses in an appeal cause.

The (Commissary of) the Lord Official etc. to the discreet men T. of A. , learned in the law, and the Dean of N. Greetings in the Lord. We commit our powers to you to receive in form of law and to examine Mr. R. V. etc. upon articles and interrogatories attached to the presents and included with them , in the parish church of W. on a certain day with continuation and prorogation of the three days then next following . These interrogatories were judicially handed in in a cause of appeal which W. of S. and J. of B. are moving and prosecuting before us in the said churtch, about the misdeeds, and with the consent of the party of the said J. And we also denounce to the party of the said so and so that he should be present on the reception of the said witnesses, if he thinks it his interest to do so....' (2)

The closing words of this citation indicate that the form of the end of the citation is indicated more fully in the citation which follows it. Here it is.

' Commission to examine sick witnesses int two causes.

The (Commissary) of the Lord Official to the Dean of B. Greetings. We commit our powers to you to receive in form of law and examine in the

(I) ' Audience ' Crt. Bk. I570-74. (2) Cam. M. S. Addit. 3II5 F I37.

church of S. on such a day next coming , with continuation and prorogation of three judicial days then next coming so and so, old and sick witnesses upon articles judicially delivered in a cause of violation of an oath, moved and pending before us in the Court of York between H. of C. on the one part and E. of T. on the other part ; also certain old and sick witnesses upon articles delivered in a certain defamation cause pending and undecided before us in the said court between the said H. and R. which are included in the presents, and upon interrogatories if any were handed to you, for the party of the said R. at a competent time, with the consent of the party's proctor of the party of H. We commit our powers to you and we warn the party of the said R. that on the reception of these witnesses he should be present at the said day and place if it seems to his interest.

Moreover send back to the said Lord Official or to us the depositions of these witnesses reduced to writing... with the articles and interrogatories aforesaid before a certain day next coming with your certificate (and certify) what you do in the premisses, enclosed and with any authentic seal. And if any of the aforesaid witnesses withdraw themselves from fear, obligation, or favour, hate or friendship, compell them canonically to bear testimony of the truth. Given etc. ' (I)

Among other forms given in the Cambridge Precedent Book there is a ' Commission to repeat witnesses in an appeal cause.' (2) This was the form used where the commission had to be renewed.

(I) Cam. M.S. Addit. 3II5 F I38. (2) Idem F I39.

The next kind of commission to be considered is a mediate one. Perhaps because of the expense which it would entail it does not seem to have been the practice at York for the two proctors or their substitutes to travel to the spot where the witnesses were to be examined in the case of a commission obtained upon mutual occasion, as they did if the examination took place within the diocese. Instead the letters requisitorial which included the commission were sent to the Bishop or Archbishop in whose jurisdiction the examination was to take place. The letters requisitorial were called either a ' request for witnesses outside the province ,' (I) or else ' Citation obtained upon mutual occasion.' (2)

Here is an example of letters requisitorial and commissional.

' Request for witnesses outside the province.

Walter Jones (bachelor) of laws , etc. To the most reverend father in Christ and Lord Edmund by the same permission (this refers to the titles of the Archbishop of York, which have been indicated by the 'etc.', and the phrase ' by divine permission ' which was one of them.) Bishop of (London) or your Vicar General in Spirituals. Greetings and all due reverence with honour . Whereas we, lately proceeding rightly and legitimately in a certain cause of probate and approbation of the testament or last will of Christopher Estofte, squire, formerly of York, deceased, between Thomas Estofte, gentleman, the plaintiff on the one hand and Lady Isabelle Ellerker, widow of the said deceased, the defend-

(I) Cam. M.S. Addit. 3115 F 138. (2) Idem F 139.

-ant on the other hand, decreed (a commission) and taking of the oath of certain witnesses dwelling in the province of Canterbury at the petition of the party of the said Thomas Estofte be asked for, justice demanding it. We therefore ask and require you, most reverend father or your Vicar General in Spirituals, because of mutual occasion that you deign to receive, swear and examine in due form of law, upon cause of mutual occasion aforesaid, certain witnesses for the party of the said Thomas Estofte before you in the consistorial place within the cathedral church of St. Paul in London aforesaid on Wednesday and Thursday next before the feast of St. Andfew the Apostle next coming after the date of the presents within the hours of nine and eleven before noon of these days respectively with continuation and prorogation of days and place if need be then following, with compulsion of these witnesses, as seems expedient to you.... about the allegations additional positions and interrogatories annexed to the presents, warning ... the aforesaid party of the said Isabelle to be present at the production, reception and taking of an oath of and by these witnesses if she thinks it is her interest to do so, when you have joined to yourselves as scribe of the acts some notary public who is indifferent to the parties aforesaid.

And we ask and require you that you deign to certify us or our deputy before Thursday next before the feast of St. Thomas the Apostle next coming after the date of the presents or upon it , along with the presents and the attestations received by you, with the certificates annexed under

your seal, closed and in authentic form, and do and expedite the necessary or requisite things in the examination of the said witnesses. In witness of which thing we have had the seal of our office aforesaid attached to the presents. Given etc. ' (I)

A request sent out in this way would be returned with the attestations of the witnesses and a certificate. An example of such a certificate is the one which was returned following the letters requisitorial given above, which is transcribed in the Bodleian Precedent Book. (2) Its purport is as follows.

Edmund Bishop of London greets the venerable man Walter Jones and announces that he has received his letters requisitorial and commissional directed to him or to his Vicar General in his consistory in St. Pauls , where he was sitting as a tribunal with his notary public. The letters were presented, read, and considered, and then the Bishop undertook the burden of their execution on himself because of the request for an aid to justice made in them, and decreed that it should be proceeded according to their force, form and effect. He took to himself as scribe of the acts the discreet man Mr. W. Say, notary public and decreed that the complete and absolute examination of the witnesses , along with the sayings and depositions , and the whole process had and made in the cause should be reduced into the form of a public instrument by the scribes mentioned, and be confirmed by his subscription. He also decreed that it should be presented to Walter Jones with his commission and the other things

(I) Bucks. Archd. M.S. d. 4. F 100.
(2) Idem F 99.

ministered before the Bishop. In witness of the premisses he has had the seal which is used for causes attached to the premisses.

PRODUCTION OF WITNESSES.

If the witnesses who had been cited either by ordinary citation or by compulsory appeared on the appointed day the next step was to produce them. The proctor acquainted the judge that he was producing them as witnesses and asked that they be admitted and sworn to depose the truth.

Here is Peter Effard's account of the proceedings.

' And if the witnesses who have been compelled to appear on the assigned day in judgement then the same proctor of the party ought to produce them and say in this way. ' Lord judge I produce these witnesses who have been compelled in this cause.' And thereupon these witnesses ought to swear on God's Holy Evangels to tell the truth in this cause as is plain in the form. ' (I)

When the witnesses appeared they could ask for the ' charges of journey ' that is the expenses they had incurred in coming to court, if they had not already received them. The judge then taxed their expenses according to their condition in life and the distance they had come. A monition could be decreed against a party who called witnesses and did not pay their expenses. (2) Whether they usually received these charges at York at this point in the proceedings or not is not clear, probably not. The witnesses then laid their hands on the Evang-

(I) Cam. Addit. M. S. 3II5 F 24I. (2) Conset Part III Chap. IV. Sect. 5.

-els, and the judge repeated the oath to them. The purport of the oath was that they were produced as witnesses and that they would depose and testify the truth so far as they knew it, ' without love, favour, affection or malice to either of the parties in Suit.' (I)

The form of the oath at York was probably similar , a like form of words is used when the witnesses make their depositions.

The witnesses then kissed the book in testimony that they took the oath. Conset says the defendant's proctor then dissented from this production, but this did not always happen at York. Here is an example to the contrary.

' And then the said Mr. Lindley is this part of the term probatory produced as witnesses John Walkar , Francisca Killingworthe, Ellen Waite, and Dorothy Walkar , whom the judge at his petition received and loaded with a corporal oath to speak faithfully all the truth about the libel, in the presence of Browne, who was silent.' (2) On the production of witnesses the adverse proctor usually protested against the nullity of this production and against the depositions and persons of the witnesses if they endeavoured to depose anything against the intention of his client, and he asked that they might give sufficient and conclusive causes for their knowledge and that a competent time be assigned him to administer interrogatories to the witnesses. Here is the production of witnesses as recorded in the court books.

' On which day hours and place Mr. Foster produced as witnesses Robert

(I) Conset Part III Chap. IV. Sect. 5. (2) RAS 60 F 132.

Smithe and Andrew Yonge, whom the judge at his petition received, admitted and gave a corporal oath to speak faithfully about the positions of the aforesaid allegation when they had touched (the Evangels) and they were warned etc. in the presence of Mr. Foster protesting about the nullity of the production of the said witnesses and of speaking against their persons and sayings if etc.'(if they spoke against his client's intention.) ' and petitioning that they be examined upon the interrogatories to be ministered.' (I)

EXAMINATION OF THE WITNESSES.

When the witnesses had been produced and sworn a time was assigned , usually before the next court day, for their examination. (2) This is what the phrase ' and they were warned ' in the passage quoted above probably refers to, though it may be a warning against committing perjury. The examination took place in private 'secrete et sigillati ' as the York form of the previous reign has it. (3) Conset says the persons in attendance were the judge or registrar and a scribe, but Peter Effard says ' the said proctor of the acting party ought to be present during the examination of these witnesses and after they have been examined to propound further if he thinks he ought to .' (4) The registrar or judge examined the witnesses on a number of questions based on the positions of the libel and the interrogatories given in by the adverse proctor. Conset says that this exam-

(I) See Hockaday P 262 for a clear account. (2) RVIIA 37 Exchequer I556-8 F 89.
(I) RAS 60 F 25.
(4) Conset Part III Chap. IV Sect. 3.

-ination was private in case of collusion among or frightening of the witnesses. One witness at a time was examined and then brought before the judge and admonished of the danger of perjury. The deposition he had made was then read over to him, and at the end of the reading the judge asked him whether he wished to add or subtract anything to the deposition. Unless the examination was repeated in this way it was not valid. The witnesses were frequently admonished about perjury and had the contents of the libel explained to them. Conset remarks. ' Seeing all Positions and Articles are usually writ in Latin, (by reason whereof the Witnesses, especially Country men rarely understand them) therefore it is very requisite that the Register or Examiner have a great care in Explaining and Declaring distinctly and plainly to the witnesses all and singular the Heads and Contents of these Articles and Positions.' (1)

It seems likely that the depositions of the witnesses were entered into deposition books at York during this period as they were at London (2) and elsewhere. ' The deposition books ' says Fincham ' as their name implies , contain the depositions of the witnesses on either side also the personal answers of the principal parties and others to the interrogatories put by the judge. ' (3) Unfortunately no deposition books for the reign of Elizabeth seem to have survived. There is however an Exchequer Court Book for the previous reign (4) whose closing folios have been used to enter the depositions of witnesses. These depos-

(1)Conset Part III Chap. IV sect. 3. (2) ' Notes from the Ecclesiastical Court Records at Somerset House.' Francis Fincham. T.R.H.S. 4th series Vol. IV. (3) Idem. (4) RVIIA 37.

-itions were taken ' Before Mr. William Rookebie etc. in the presence of me Winifrid Ellis notary public etc. ' (I)

It is difficult to say whether Ellis was a registrar or simply a proctor or notary public, more likely the latter. Persons deposing are usually described in some way such as ' labourer ' or ' gentleman.' (2)

Here is a typical deposition in a breach of promise cause ; it is interesting that the witness seems to have discussed his deposition with the proctor of plaintiff and perhaps rehearsed it. At any rate he comes straight to the point he was trying to make, namely that the essential words of a verbal contract of marriage had been spoken , the ' verba de presenti ad hoc apta ' as the York form has it. (3)

Richard Gibson, a witness, deposed as follows.

' That aboute the myddest of September next shalbe two yeres this deponent was presente with Andrewe Bewicke in the house of Thomas Robinson of the parishe of St. Nicholas in Newcastle aboute two of the cloke at after none, where the said Margerye Carre said unto Androo Bewicke being presente.

' I do marvell that ye be so straunge nowe a dayes.' And he answeringe said ' I am not strange for wherefore shulde I come in your companye using me as you have bin heretofore. And then the said Margerie tok furthe of hir purse a new I2d and offerred it to the said Andrew. And the said Andrew said that he wolde not taike the said token oneles it were in the waye of matrimonye. And the said Margerie said she was content so

(I) RVIIA 37 (2) Idem. (3) Bucks. Archd. M.S. d. 4. F 63.

that he wolde do the like unto hir. And upon that the said Andrewe sent for the good man of the house called Thomas Robinson, and finding them sitting at table the said Andrewe desired the said Thomas to here what the said Andrewe and she shulde comen of. And then and there the said Andrewe immediately toke the said Margerie by thande and said unto her. ' Here I , Andrew take you, Margerie to be my wife refusing all other for the love of you. And thereupon I gyve you my faith and troeth. And then they losed hands and joyned hands agayne and the said Margerie said unto the said Andrewe ' Here I taike you , Andrewe to my husband, refusing all other for you so longe as I lyve and thus I gyve you my faith and also my troeth.' And so this deponent toke a cuppe of wynne and poured yt upon there hands sainge. ' I pray God it be done in a good tyme.' And she said she trusted to God she shuld never repent yt for hir mother was well contented with that she shulde do with the said Andrewe.... And further he saiethe that immedietlei after the said contracte the afforesaid Margerie gave the said Andrew the aforesaid I2d of newe silver and he gave hir a goode ryng of his finger which tokens eche partie toke thankfullie.... And then the said Margerie said unto the said Mylborne . ' I have made a promesse and gyven him my faithe and trothe and that promyse I have made unto him I will stand by so longe as I lyve. And rather then I should have that old churle (meaning John Wilkinson) I had rather lope Tyne brigge.' (I)

She married ' that old churle ' soon after, when Bewicke , who

(I) Bewicke c. Carr. July I558 Unref.

was a sailor, had gone back to sea. This occasioned the cause. Breach of promise causes , or causes of contract of marriage as they would be called at this time, were frequently brought by men against women, chiefly one may suppose because of the dowries attached to the womens' persons.

INTERROGATORIES.

These were lists of questions designed to trap the witness into an admission which would prove useful to the adverse party, or at least to establish that he had real knowledge about the matters upon which he deposed. The questions were framed in order to throw light on how the deponent came by his knowledge , whether he was there personally, how he came to be there, what was his position in life, was he a servant, friend or relation of the person for whom he deposed, was he so poor that he would willing take a bribe and questions of that sort. Interrogatories were required to be ' pertinent or have relation to the Cause or Matter.' (I) At the end of the interrogatories the proctor might insert a petition saying that the party administering them asked that every witness might give the grounds of his knowledge or otherwise he protested of their nullity.

A person refusing to answer interrogatories would be cited in the following way.

' Citation to reply to interrogatories.

The (Commissary of) the Lord Official etc. to the dean of C. Greetings.

(I) Conset Part III Chap. III.

Cite peremptorily C. of O. that he appear before the said Lord Official etc. on such a day next coming and proceed and see it proceeded and reply personally to certain interrogatories to be emitted and made to him out of our office in a certain cause which A. of L. is moving and prosecuting against the aforesaid C. in the Court of York etc. as above. ' (this refers to the phrase ' and for the proof of the making of our citation.') (I)

Here are specimen interrogatories taken from the cause quoted above.

' Interrogatories on the part of John Wilkinson and Margerie Wilinison alias Carre upon which the pretended witnesses produced and to be produced on the part of Andrewe Bewicke are to be interrogated jointly and separately.'

I. First every witness is interrogated about the causes of his knowledge in all his sayings and depositions.

2. Item. Every witness who has deposed as above for a contract of marriage between the said Bewicke and Carre is interrogated on what day or night the hour of the day or night, the year, and the month (it was made.) and how many and who were present....'

4. Item every witness is interrogated about the place....

5. Every witness is interrogated which particular party he favours the most and with whom he converses the most and to which of the parties he would give victory if it were in his power to confer it.

(I) Cam. Addit. M.S. 3ii5. F. I4.

6. Item every witness is interrogated what his goods are worth and what he hopes to have for his depositions or testimony.

7. Item every witness is interrogated whether he is a relative or kin to any of the parties and in what degree.

8. Item every witness is interrogated at whose expenses and at whose request he has come to this judgement to give testimony.

IO. Item every pretended witness is interrogated by virtue of his oath ' Whether he suppose that Andrew Bewikce myght be hired for money to cease of his suete or noo.' (I)

These were fairly typical interrogatories for the period. In addition to being asked whether he were a relative of any of the parties, a witness might be questioned as to whether he belonged to the household of either of them and whether he was servant or tenant to either of them. He might also be asked what his income was when all his debts were paid, and questioned ' whether you have been laboured and solicited to be deponed in this cause and to depose .... by whom and when and for what considerations.' Witnesses were also frequently interrogated about their opinion of their fellow witnesses, whether they were trustworthy persons or not. In addition a witness would be warned not to talk about his sayings and depositions before publication of depositions.(2)

(I) Bewicke c. Carre. File. Unref. (2) Langdaile c. Watson. I593.

PUBLICATION OF THE DEPOSITIONS OF THE WITNESSES.

If the plaintiff's proctor believed that he had proved his client's intention and did not intend to produce any more witnesses he requested the judge to publish the depositions of the witnesses and decree copies of them. The judge accordingly did this. Here is Effard's account of procedure.

' The said proctor of the acting party... ought to be present before the judge for the publication of the sayings or attestations of these witnesses. And the proctors ought to say. ' We petition for the publication of these witnesses.' And the judge ought to publish the sayings and depositions of the witnesses at the petition of the proctors aforesaid and decree to them petitioning thereupon copies of these witnesses, at the petition of the aforesaid proctors.' (I)

Publication was recorded in the court books as follows.

' On which day hours and place the judge at the petition of Mr. Broket published the sayings and depositions of the witnesses and decreed copies to either party who petitioned for them.' (2)

If the defendant had contrary matter to put forward he dissented from the publication of the witnesses and protested that he did not know what they had deposed. (3)

The party who had a term probatory assigned to him might renounce it if there was any of it left and if he thought he had proved his

(I) Cam. Addit. M.S. 3114 F 242. (2) Consistory Crt. Bk. 1586-87. F 29.
(3) Conset Part III. Chap. IV. Sect. 6.

intention sufficiently and ask that a term be assigned to propound all acts. If his adversary had something to propound he could claim the term to propound and use it himself. If either party then wished to use the term probatory to propound further material the assignation to propound all acts could not be obtained until the term probatory was over.

EXCEPTING AGAINST WITNESSES.

Exceptions, that is complaints against some aspect of the opponents cause might be made against the depositions or persons of the witnesses and might be made before or after the publication of the witnesses ' depositions. Here is what Peter Effard has to say regarding exceptions.

Immediately after publication ' the proctor of the defendant's party ought if he wishes to petition the judge for the term to speak against these witnesses and their sayings in this form. '' Lord judge I petition for the term to speak against the witnesses and their sayings in this cause.''

When this term has been assigned to the said defendant according to the decision of the judge and has arrived the said proctor of the defendant ought to propound exceptions in writing if he has any, against these witnesses and their sayings , and he will give a copy of these exceptions to the said adverse party. And the said party excepting ought to be judicially present and petition that these exceptions of his be admitted by the judge. When they have been admitted by the judge he ought to petition for a certain day to prove these exceptions and on every day

before when the party has been warned and on any day the same excepting party can give positions and articles out of his said exceptions in the term or within it , when the adverse party has been warned , having examined and produced witnesses upon them if he wishes.

And if any witnesses have been produced and admitted in form of law by him upon these exceptions and subsequently examined, then the sayings and depositions of these witnesses ought to be published in the aforesaid form at the petition of the aforesaid proctors. And then the other party will have a term to speak against these witnesses if he wishes to and may do further as is expressed above. And if in the said term to speak against the witnesses and their sayings neither party excepts or gives exceptions in writing then the good (i.e. skilful) proctor of the defendant in this term assigned ought to except by word of mouth in this form.

' Lord judge I, proctor so and so, except against all and singular the witnesses produced against my master and their statements, if , and so far as it can be collected out of their sayings and depositions and not otherwise nor in another way.' (I)

Exceptions were either general or special. General exceptions were made ' when the Defendant hath no particular Exceptions to propound in writing to hinder the conclusion in the cause.' (2) . In other words if a proctor could find nothing more to say against the witnesses he could, as Effard points out, allege that their statements were contradictory ,

(I) Cam. M.S. Addit. 3II5 F 243. (2) Conset Part III Chap. IV. Sect. 6.

confused, inept, and anything else which he could think of. In the ecclesiastical courts no-one ever admitted that anything or anybody brought forward by the opposite party was genuine or sincere , unless they say some advantage to themselves by doing so. Witnesses were always ' pretended witnesses,' other ordinaries , such as the Vicar General at Chester from whom large numbers of appeals were brought to York were always ' pretended ' ordinaries.

General exceptions at York were made at the act of court, ' ore tenus' as the form has it. The defendant might except orally against the witnesses and say that they were ' various, wavering in their depositions, singular and disagreeing, contrarying and repugning one another in their sayings and depositions.' as Conset puts it .(I) He would imply generally that they themselves were worthless persons and moreover wholly given over to the plaintiff's interest. It was a poor proctor who could not find anything to except against witnesses at York during this period. In a county such as Yorkshire, which was full of beggars it was possible to find witnesses who would swear to anything for a little money. In addition there was a great demand for old men who could remember the world before the Dissolution of the Monasteries. Old servants of the monasteries or collegiate churches who might be expected to remember anything about the tithes collected and owed to these institutions were sought out and brought into court. Most of these people could not have known anything about tithes , one witness h for instance , who was a servant of

(I) See for example RAS 8/5.

the vicar of Nafferton ' for about a dozen years ended fifty years ago'(1522) during which time he attended his master to Lowthropp college , as his master was cousin to Doctor Bransbie the master, and being ' conversante with the felowes and servantes of the said colledge he saith he hath hard theme at soome times make reporte of the profites and commodities that belonged to the college aforesaide ' probably never heard any of the persons mentioned talking about tithes. Nor in all probability could he have remembered the amount of tithes or deposed as fully as he does if his memory had not been jogged by the party for whom he deposed. (I)

Another witness in the same cause protested afterwards ' that he was not sworne or that he thought he had not beene sworne in this cause and said and protested that he would not have said and deposed as he did or hath done in this cause if he had thought he had beene sworne.' (2)

The adverse party then protested that these allegations and exceptions were false and that they showed generality, undue specification ineptitude and nullity and that they ought not to be admitted, and asked that they be rejected.

The judge then admitted these exceptions in so far as they could be lawfully admitted and assigned a term to the party to prove them. An oath of calumny might be given to the proctor who excepted and if he did not take this oath his exceptions would be disallowed. (3)

Mr. Broket, the proctor for Watson in the cause of Langdaile c. Watson, p excepted generally against the witnesses produced by the other side

(I)Cause Paper File RAS/ 8/5. (2) Idem. (3) Conset Part III Chap. IV. Sect. 6.

in the following way. ' That Martin Wiles, Richard Bonewick, William More, John Atkinson and Gregory Colyer pretended witnesses produced, sworn and examined on the part and for the part of the same Marmaduke Langdaile articulate were and are false both in their sayings and pretensed depositions given in this cause and varying and vacillating and by no means agreeing and primed (docti) and instructed and corrupted to depose in this cause.' (I) Moreover, he went on , they were at the time of their production and still are and all of them are needy people and of slight estimation and were openly reputed and known as such in the places where they lived and in other neighbouring places. He then proceeded to a special exception, alleging ' that the said Martin Wiles, not long after his pretensed examination had in this cause , constantly said and affirmed ' that before his production and examination he was earnestlie labored by the said Marmaduke Langdaile to be a witness for him in this cause and that he had IO/- in gould of him the said Marmaduke over and besides his charges for deposing and bearing witness for him in this cause, and that he had spoken and deposed in this suyte that which was not true for and on behalfe of the said Marmaduke Langdaile and which he could not justifie to be true.' (2)

Mr. Broket then made oath upon this allegation and asked for right and justice to be done him and for this allegation to be admitted.

Special allegations such as the above were put into writing with the particulars of the charge against the witness.

(I) Cause Paper File RAS 8/5. (2) Idem.

These exceptions were then admitted and repeated and the adverse party was cited to answer them. The party propounding them might be made to take the oath of calumny before they were admitted. The exceptions dealt with above are those of the defendant against the probatory witnesses of the plaintiff. Exceptions could also be made against the witnesses whom the plaintiff produced to disprove the defendant's witnesses and so on to a four fold plea.

TERM TO PROPOUND ALL ACTS.

When publication of the depositions had been made the plaintiff requested that a term be assigned to propound all acts in order that a conclusion might be made in the cause. The judge accordingly did this . If the defendant had any contrary matter to put in, if for example he wished to make use of exceptions, he dissented from this assignation. (1)

The term to propound all acts ' is not named in the whole Body of the Law, and it is said to be rather a Term of the Judge , than of the Law, to take away the delays ; the Defendant may (on that day so Assigned to propound all Acts..) give in any Exceptions or defensive Matter, or he may add to those which are formerly given in on his part, if any such be, and declare them by way of positions additional.' (2)

Effard says. ' If the parties do not propound anything in writing in the term assigned to speak against the witnesses and their statements, or when the term probatory assigned in this part has lapsed the parties do not propound exceptions against the witnesses then the judge ought

(1) Conset Part III. Chap. V. Sect. I. (2) Idem.

to assign a term to either party , that is a term to propound all acts in the presence of the law at the petition of the proctors or either of them unless there is any other reasonable cause in this part. When the term to propound everything in the presence of the law assigned by the judge has arrived, if nothing is said or proposed in writing by either party then the judge ought to conclude in the cause.' (I)

On the day assigned to propound and invoke all the acts the proctor who thinks he has the better cause must say in court that he exhibits all the acts or things enacted, brought into court, alleged, propounded and exhibited, proved, and confessed in the cause, so far as they make for him, and ask that a term may be assigned to conclude against the next court day. The adverse party should do the same unless he cannot hope to win and is only interested in protracting the cause. (2) The judge then assigns a day to conclude. At this point the defendant who intends to make use of exceptions ought to do so, for, as Effard points out, he cannot do so at a later stage of the cause. Here is an example of the record of a term to propound all acts.

' On which day hours and place Mr. Standeven spoke and excepted orally against the exhibits in this cause, in the presence of the said Mr. Fawcett and then the proctors respectively petitioned and invoked all the acts etc. Then the judge at the petition of Mr. Fawcett assigned to conclude in this cause.' (3)

(I) Cam. M.S. Addit. 3II5 F 243. (2) Conset Part III. Chap. V. Sect. I.
(3) Consistory Crt. Bk. I586-87 F 23.

CONCLUSION.

' To conclude in the Cause is nothing else but to renounce all further discussing and disputing the matter and to submit the Controversie to the knowledge of the Judge. Therefore the Conclusion of the Cause is a Judicial Act whereby the Cause or some Article of the Cause is accounted for concluded ; so that there is no room left for the Parties further disputation.' (I)

On the ' term to conclude ' as it was called at York (2) the proctor who had asked for a day to be assigned to conclude must say that he concluded in the cause with the judge's permission and ask him to grant a conclusion, or both proctors might respectively petition that it be concluded. Conclusion then followed and was recorded as follows.

' To conclude in this cause. On which day hour and place the Judge concluded with the parties concluding with him and it was had as concluded.' (3)

The plaintiff's proctor then asked that a term be assigned to hear sentence, as in the following example.

' And then the judge at the petition of the said Mr. Fawcett assigned to hear simple sentence in this cause. ' (4)

Even if the defendant was not informed of this day to hear sentence he must appear or be pronounced contumacious. (5) Peter Effard suggests that the day to hear informations ought to come between conclusion and assignation to hear sentence in the words - ' after the judge has been

(I) Conset Part III Chap. V. Sect. I. (2) Consistory Crt. Bk. I586-87 F 23.
(5) Conset Part III Chap. V. Sect. 2. (3) Consistory Crt. Bk. I586-87 F 3I.
(4) Consistory I586-87 F 3I.

sufficiently informed then he ought to assign to the parties the said term to hear sentance in this cause.' (I) He further remarks of the term to hear sentence ' and it must be known that this term as is mentioned above ought to be observed in every cause unless it is renounced by either party.' (2)

DAY OF INFORMATION.

' The day to inform the judge about the merits of the cause ' (3) as Effard calls it, or the day to inform the judge as to matters of fact and law (4) was a day on which no court was kept and consequently the proceedings of the day were not recorded in the court books. It was held in the room of the judge or advocates (in the consistory in some places.) The proctors and advocates feed in the cause were present . The proctors were present so that they could acquaint the advocates about the acts that had been done, and they were considered more expert in this than the advocates , ' not only because all Acts of Court are drawn by them but also because these Acts are wont to be writ in a Book, kept by them for the same purpose particularly.' (5) The order of events at informations was as follows. The advocate of the plaintiff first read the libel to the judge in the presence of the advocate of the defendant, and the judge made notes of it. Then the answer of the defendant to the libel was read, which the judge also noted in a summary way. The depositions of the witnesses could also be read if it were

(I) Cam. M.S. Addit. 3II5 F 244. (2) Idem. (3) Idem. (4) Conset Part III. Chap. V. (5) Idem.

thought necessary. Then the defendant's advocate read his cause with all the proofs. When this was done the advocates informed the judge what matters of law arose from the matters of fact proved on both sides. If they could not agree about this question the judge decided what questions of law arose. ' And for the discussing and arguing these Questions of Law, and also the matter of Fact or the merits of the Cause many days are wont to be Assigned, before the judge is fully satisfied in the matter.' (I)

SENTENCE.

' Sentence ' says Conset , ' Is taken for a decision (of anything in controversie)made by the Judge alone.' (2) He mentions several kinds of sentence, among which are interlocutory and definitive sentences. An interlocutory sentence ' is that which is pronounced betwixt the beginning and ending of the Cause ; not upon the principal cause, but upon some incident or emergent questions.' (3) A definitive sentence on the other hand was a final sentence ; there were however occasions when an interlocutory sentence might have the force of a definitive sentence. More important from the practical point of view is the division of sentences at York into ' simple ' sentences, that is sentences without conditions, and ' ad cautelam ' sentences , that is sentences to which conditions were attached.

Conset's account of the procedure in giving sentence is as follows.

(I) Conset Part III Chapter VI. Sect. I. (2)Idem. (3) Idem.

The proctor who hoped to obtain sentence in the cause drew up the sentence in writing and gave it to the judge with the words, ' I desire sentence may be given and that justice may be done in my part ;' the judge read the sentence and when he came to the words ' but the part of N.' (that is the party against whom the sentence is going to be given) he stopped and asked the proctor of the party 3 who had lost the cause what he would say or ask. The defeated proctor replied ' I desire that justice may be done. ' Then the judge wrote down the word 'justice ' in a space left for it in the sentence so that if there were controversy about whether he had pronounced the sentence or not he might be able to decide it by consulting the written sentence and recognising his handwriting. (I)

Here is the record of the passing of sentence, as noted in the court book. ' To hear a simple sentence in this cause, a citation was decreed for Sewell to be present to hear sentence made. On which day, hours and place Mr. Foster introduced a citation with its certificate and the said Sewell having been summoned appeared personally. In his presence the judge gave sentence at the petition of Mr. Whitacre petitioning that sentence in this cause be made for the validity of the custom alleged, in the presence of the said Sewell, as appears from the tenor of this sentence. There were present then and there Mr. Henry Swinburne and Henry Scott, bachelors of law, John Broket, Edward Fawcett, and William Fothergill, notaries public, witnesses etc.

And then the said Whitacres exhibited his proxy for the

(I) Conset Part III. Chapter VI. Sect. I.

churchwardens and made etc. at whose petition the judge decreed that execution of this sentence be demanded and demanded it in the presence of the said Sewell consenting , and further the judge at the petition of the said Whitacres decreed letters testimonial on the publication of this sentence.' (I)

Here is an example of a sentence from the Bodleian Precedent Book. ' In the name of God, Amen. We John Dakyn, doctor of laws and Vicar General in Spirituals of the most reverend Father in Christ and Lord the Lord Nicholas by divine permission Archbishop of York, Primate and Legate of the Apostolic See, having heard, seen, understood and fully discussed the merits and circumstances of a certain business judicially agitated out of our mere office against the conduct of William Deaman rector of the parish church of Ordesall, York diocese and whereas by the notoriety of the fact and by other legitimate proofs had and made in this part it evidently appears that the same William Deman was inst - ituted in the parish church of Ordesall by sufficient authority and inducted according to the order of law and that for the space of six years that is for three years and more, he has disposed of and converted the fruits of and income of the same church to his pleasure and also that the same William Deaman has not undertaken the iniation as the sacred canons demand, but has lived in all respects as a layman and still lives so , in contempt of clergy and of the church whose fruits he has so uselessly dissipated so long, a grave peril and damnation to his soul;

(I) RAS 60 F I5.

we therefore, John Dakyn Doctor of laws, Vicar General in Spirituals aforesaid having first invoked the name of Christ and turned our eyes on the only God, by and with the council of learned men with whom we consulted in this part , decreed that the aforesaid William Deman rector of the parish church of Ordesall aforesaid was to appear before us on a competent day and place to give cause why he ought not to be deprived of the said parish church by reason of his outstanding neglect of the sacred orders of a priest and the citation having been duly certified and the same William having first been publicly summoned and not appearing and having been awaited during an interval of certain days , we pronounced him contumacious and reserved penalty of his contumacy to this day and place.

Now the same William not appearing by any means we have reputed him contumacious out of our superabundant power and we have decreed that he be deprived of the said parish church of Ordesall with its rights and all that pertains to it, in penalty of his contumacy , and we do deprive him in fact by this our definitive sentence or final decree which we make or promulgate in these writings.

This was read etc. on the ninth day of the month etc., year etc., by the aforesaid judge etc. in the presence etc. in the place etc. ' (I)

' Immediately after sentence has been given ' says Peter Effard ' the party against whom this sentence was given ought to appeal by word of mouth at the acts to the judge immediately superior, if he wishes to, and the party appealling ought to say in this form.

(I) Bucks. Archd. M.S. d. 4. F 103.

' I appeal as much from the sentence as from a grievance to the Audience of such a one and I ask for the Apostles, firstly , secondly and thirdly, instantly , more instantly and most instantly, and once more I petition that the apostles be given and made.' With the effect that the judge from whom it is appealed is obliged to give the Apostles in writing or by word of mouth and the proctor ought to see that he is ready to receive the Apostles then assigned before the notaries and witnesses.' (I)

These Apostles were letters dismissory or a verbal statement of dismissal which dismissed the party from the cause.

Here is a notification of appeal, as recorded in the court books. ' Mr. Farcher... appealed directly to the venerable and worthy man . Mr. Matthew Hutton, Professor of Sacred Theology and Dean of the Chapter of the cathedral church of York, to whom etc. or their locum tenens from this sentence as much as the iniquity and injustice done, and petitioned for the apostles, firstly, secondly , and thirdly, etc. And then the judge because of his reverence for the said Dean and Chapter to whom it was appealed , delivered this appeal and assigned to the same Farcher apostles, and to prosecute this appeal against Friday in five weeks... there were present then and there Masters William Dunwich , Michael Brownrig, and Edward Fawcett etc.' (2)

The judge made two assignations to the party who lodged an appeal, one to certify the prosecution of the appeal, and the other to prosecute it. Thus in a Chancery cause in which sentence was given about

(I) Cam. M.S. Addit. 3II5 F 244. (2) RVII A.

five days before Whitsun the first assignation was made for ' Friday next after Whitsun next , ' (I) and the second ' before Easter next.' (2)

The statutory time for the notification of an appeal was fifteen days. (3)

The time to prosecute an appeal might vary , but usually it was a year ; the party in this cause seems to have got about nine months in which to prosecute the appeal. If at the end of the term to certify about the prosecution of the appeal no appeal had been interposed the adverse proctor appeared before the judge and acted as follows.

' The term to certify about the prosecution of the appeal in these causes has lapsed. On which day hour and place Mr. Farcher exhibited his proxy which is at the acts for the said churchwardens and petitioned that the said defendants be cited to say cause why the aforesaid appeals formerly interposed ought nbt to be pronounced deserted and execution of sentence demandedn , and also that taxation of expenses should be heard. ' (4)

The judge then decreed that the party who had interposed the appeal be cited to say cause if he had any ' why his pretended appeal interposed from the said definitive sentence ought not to be decreed and declared as deserted and execution of the same sentence be demanded and also to

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(I) ' Chancery ' Crt. Bk. I575-79 F I33. (2) Idem. (3) 24 H. 8. c. I2.
(4) Consistory Crt. Bk. I586-87 F 35.

hear taxation of expenses made in this cause.' (I) Here is an example of this citation.

' Citation why an appeal ought not to be decreed as destitute and execution of sentence demanded.

The (Commissary) of the Official of the Court of York to the curate of Ledes. Greetings. Cite peremptorily J. W. your parishioner that he appear etc. on a day etc. next coming after the date of the presents to say any reasonable cause if he has any or can say any why his appeal from a certain definitive sentence formerly given in the same Court of York for the party of R. W. against the same J. W. made to the Chancery ought not to be pronounced as deserted and due execution of this sentence demanded in form of law, etc.' (2)

The party appealing was then cited and if he did not appear the proctor who had had him cited appeared with the citation and its certificate and a citation ' by ways and means ' was sent out for him. (3) If he still did not appear the judge might pronounce him contumacious and decree the appeal deserted as penalty of his contumacy and that execution of sentence be demanded in this cause and demand it. (4)

Once execution of sentence had been obtained the proctor who had obtained it handed in a bill of expenses which he petitioned might be taxed in the following manner.

' Mr. Farcher gave in a bill of the expenses made in this cause

(I) ' Chancery ' Crt. Bk. I575-79 Shepperde c. Broughton. (2) Bucks. Archd. M.S. d. 4 F 7I. (3) ' Chancery ' Crt. Bk. I575-79 F I46. (4) Idem.

which he petitioned might be taxed, in the presence of Mr. Fothergill... and the judge assigned to hear his will on the taxation of the said bill.' (I)

The expenses were then taxed as follows.

' To hear the will of the judge about the taxation of the bill of expenses. On which day the judge at the petition of Mr. Fawcett taxed this bill to the sum of £6 in legal English money besides the fees for the letters monitional. And then the judge at the petition of the said Mr. Farcher decreed that the said Thomas Broughton be warned to pay £3 the half of the said schedule of sentence before the Feast of St. James the Apostle next to the party of the said Thomas , otherwise to appear on Thursday next following at these hours and place to hear himself excommunicated, and £4 for the last half of the said expenses to the party of the same Shipperde, otherwise to appear on Thursday next following at these hours and places to hear himself excommunicated.' (2)

The expenses were usually divided in half in this way, one half to be paid on the spot or soon after, the other to be paid later. (3)

If the defeated party did not pay his expenses after having had letters monitional sent out for him the proctor of the plaintiff appeared with the letters monitional and their certificate and lalleged that the defeated party had not payed his expenses, and took an oath upon this. Here is an example of a citation sent out at this point.

' Citation by ways and means with citation to give cause why someone ought not to be excommunicated because of non-payment of the taxed expenses.

(I) ' Chancery ' Crt. Bk. I575-79 F I49. (2) Idem F I57. (3) e.g. Consistory Crt. Bk. I586-87. F 30.

The (Commissary of) the Official of the court of York to all[illegible] etc. Greetings. Cite peremptorily or one of you cite peremptorily Mr. W. B. vicar of W. if you are able to apprehend him etc. that he appear before us or our Commissary in the greater church of York on the day etc. next coming after the date of the presents to say reasonable cause if he has any or can say any or allege why he ought not to be excommunicated in form of law for non payment of expenses in a certain pretended cause of defamation moved and finally decided in the same court according to our monition judicially made to him in this part, and further let him do and receive what justice shall advise etc.' (I)

Previous to this citation the party who had to pay expenses would have been declared contumacious and then excommunicated at the adverse proctor's request. If he still did not appear, after fourt[illegible] days the letters of excommunication by which he had been denounced were brought into court with their certificate and the proctor alleged that the party had stayed excommunicate for forty days and more. He was then cited to say cause why the Queen's Majesty should not be written to for the arrest of his person . Finally a significavit was written for. (2)

It would be as well to sum up in Effard's words of conclusion, even though, as has been seen, there were differences in procedure between his day and that of Elizabeth.

' These are the most general terms in any kind of cause before a judge , that is the term for introducing the libel , the term to del-

(I) Bucks. Archd. M. S. d. 4. F 71. (2)'Chancery' Crt. Bk. I585-95, F 30 and F I72 for the procedure outlined here.

-iberate on it, and then the contestation of suit and the taking oaf of an oath of calumny and of telling the truth by all, the term to propound , and three terms , the first, second and third to produce and the term to publish the attestations and to speak against the witnesses and their sayings , and to propound everything ... and the conclusion in the cause , and the term to hear sentence , for the due intervals of time and is noted above. However for your information some of the terms briefly recited (are more) than can severally be contained in any cause.' (I)

PROCEDURE ACCORDING TO THE FORM OF FORMER ACTS.

If for some reason a proctor had become unsuited, that is had ceased to be a proctor, either through death, renunciation, or the ending of his proxy through some other reason the party who had employed him had to be cited once again to proceed in the cause. He was cited to proceed ' secundum formam retroactorum ' that is according to the form of former acts. The citation referred to the acts which had been done in the cause up to the point when the proxy was ended and the cause was continued from that point.

Here is an example of a proctor asking that the adverse party should be cited to appear and proceed according to the form of former acts. ' On which day hours and place Mr. James Stocke proctor of the said David Jacc alleged that Mr. Dunwiche the proctor of the said Robinson legitimately constituted in this cause has died wherefore the judge at his petition

(I) Cam. M.S. Addit. 3115 F 244.

decreed the said Robinson to be cited to proceed and see it proceeded according to the form of former acts had and made in this cause and especially to hear definitive sentence given and promulgated with an intimation etc. against Friday next in eight days next after Whitsun next these hours and place.' (I)

If this citation to proceed according to the former acts was ineffective, it could be followed by a citation with a ' citation by ways and means ' attached. (2) When the citation had been delivered to the party in the cause he appointed another proctor and the cause proceeded. (3)

Here is an early example of a citation of this sort from the Cambridge Precedent Book.

' Citation according to the form of former acts.

The (Commissary of) the Lord Official to so and so. Greetings. Cite peremptorily such a one that he appear on such a day next coming to proceed legitimately in a such a cause which J. of V. is moving and was prosecuting according to the form of former acts and in all and singular judicial acts to be had in the aforesaid cause for the due intervals of time up to the final decision of this cause. And further let him do etc. and for the proof. etc.' (4) In a later citation of the same sort from the Bodleian Precedent Book it is stated that the proctor has resigned from the cause. Here it is.

(I) ' Chancery ' Crt. Bk. I575-79 F 46. (2) Idem F 47. (3) Idem. Another instance of this procedure occurs in Consistory Crt. Bk. I586-87 F 22.
(4) Cambridge Lib. M.S. Addit. 3II5 F I6.

' The Commissary of the Lord Official of the Court of York to the curate of B. and other rectors wherever constituted throughout the diocese and province of York. Whereas we were taking cognisance of and proceeding legitimately in a certain cause of appeal between T. R. of B. the aforesaid party the party appealed from on the one hand and the party appealing on the other hand Mr. R. B. proctor of the said J.L. and of others judicially left this cause of the said appellants undefended before us.

We therefore order you jointly and separately firmly enjoining you that you cite peremptorily or one of you cite J.R. L. and J.C. that he appear etc. on Teusday next coming to contest suit in the cause mentioned and proceed and see it proceeded according to the form of former acts and also to be present at all and singular acts and terms to be had and determined in the same cause successively up to and including the definitive sentence and proof for the due intervals of time time and to do and receive what the laws shall require. And (certify) what you do in the premisses. etc.' (I)

Another example of a citation calling on a party to appear when his proctor's proxy has expired is given by the Cambridge Precedent Book,(2) in the form of a ' Citation by ways and means in the case of a proctor's death to hear sentence etc.' In it is set out that the proctor of a certain V. M. has died when the matrimonial cause which he was conducting had reached the conclusion. The rural dean and the perpetual vicar to whom the citation is addressed are ordered to notify the party that his

(I) Bucks. Archd. M. S. d. 4. F 85. (2) Cam. Addit. M.S.Addit. 3II5. F 50.

proctor has died and to cite him in the manner of a citation to appear on a certain day to proceed in this cause ' according to the nature and quality of this business.' Although the citation does not actually state that procedure according to the form of former acts is to be employed, it seems to indicate it.

CHAPTER SIX. SUMMARY AND CRIMINAL PROCEDURE.

' This summary proceeding ' says Conset ' is said to be that in which no reason or order is kept but rather all order is deserted, the truth of the fact being only inspected l; or it is proceeded ' de plano, sine strepitu et figura judicii. ' (I) ' Generally speaking ' says Hockaday, ' all proceedings instituted at the mere office of the judge were summary, but if the office of the judge were voluntarily promoted they were plenary, as also were causes of instance, viz. those in which one party sued another.'(2) This of course a general classification, the distinction between which kinds of causes were to be tried summarily, and which plenarily never seems to have been worked out properly, as was said in a former chapter. On the whole the canonists seem to have gone to work on the thoroughly sound principle that the more care taken over a cause the better, so that the majority of causes were tried plenarily. Probably the courts at York like those elsewhere , did not have hard and fast rules concerning the causes to be tried according to the two kinds of procedure.

Procedure in obtaining executing certifying and bringing citations into court was the same as in plenary procedure ' seeing the same order

(I) Conset Part IV. Chap. I. Sect. 3. (2) Hockaday P 216. ' Gloucester Consistory Court.'

as to that is alike observed in all Causes.' (I)

Here is an example of the beginning of a summary cause.

' Office of the judge promoted by Mr. James Stocke, notary public against Edward Holme of Haulcholme squire and Anne Constable alias Holme his pretended wife of the parish of Hawleholme in Holdernes , diocese of York.

On which day and place the judge assigned to Mr. Stocke to promote his office in this cause, which assignation the same Mr. Stocke undertook on himself, and then there appeared personally the said Edward Holme and Anne Constable alias Holme and constituted both of them Mr. John Farley notary public.... Mr. John Farley exhibited this proxy and made his party for them,' (2)

When the citation had been brought into court the plaintiff's proctor gave in the libel and petitioned that procedure should be summary and ' de plano ', which simply means summary. The judge decreed accordingly and the defendant replied that he dissented from the premisses. ' And this dissenting ' says Conset ' is sufficient in these causes without contesting suite and denying the libel etc. as in the plenary causes.' (3)

The plaintiff then petitioned that the defendant's proctor should answer to the libel. The defendant's proctor then said merely that he did not believe the positions of the libel were true. (4) Here is an example from the cause quoted above.

' Mr. Stocke exhibited a certain libel or certain articles conceived in writing against the said Edward Holme which he asked might be ad-

(I) Conset Part Iv. Chap. I. Sect. III. (2) ' Audience ' Crt. Bk. I570-74 F 160. (3) Conset Part IV. Chap. I. Sect. III. (4) Idem.

-mitted and that it be proceeded summarily in this cause etc. in the presence of Mr. Farley.' (I)

The plaintiff then petitioned that the libel should be repeated in full force of positions and articles and the judge repeated it with the proviso ' saving the rights of things not belonging to it and not to be admitted.' (2) Here is an example of this step in procedure, still from the same cause.

' And then the judge at the petition of the said Mr. Stocke admitted the said libel or articles in as much as they were lawful, and decreed that it should be proceeded summarily in this cause etc. in the presence of Mr. Farley, and further the judge at the petition of the said Mr. Stocke repeating the same libel or articles in force , etc. repeated them and at the petition of Mr. Stocke loaded Edward Holme and Anne Constable with a corporal oath, they being present personally, to reply personally to the positions and articles of the libel or articles, after they had touched (the Evangels) and he warned them to undergo the examination before they left York.' (3)

Witnesses might then be cited, produced sworn and examined, and their depositions published and e xcepted against as is described under plenary procedure . (4) In the cause which has been cited Mr. Farley produced witnesses to prove some matter which he had given in and was assigned a term of one day in which to prove it. His witnesses were sworn and admitted and Stocke protested against their testimony and asked that

(I) ' Audience ' Crt. Bk. I570-74 F I60. (2) Conset Part IV. Chap. I.
(3) ' Audience ' Crt. Bk. I570-74 F I60. (4) Conset Part IV. Chap. I. Sect.3.

they should be examined on interrogatories and that he should be given a term to administer them. The judge assigned to him as a term the whole of that day. (I)

By the following day the term assigned to the defendant's proctor to prove his matter had lapsed and the witnesses had been examined. The judge then published the sayings and depositions of the witnesses and decreed copies of them to the parties. (2)

When the cause had reached this stage, Conset says ' the plaintiff's proctor asked the judge for an assignation to hear sentence. This is the ' first assignation to hear sentence ' (3) and corresponds to the term to propound all acts in a plenary cause. On the day assigned to hear sentence the plaintiff asked again that it should be assigned to hear simple sentence. The adverse party might dissent or keep silent. If neither party had anything to put forward before this second assignation to hear sentence was made the conclusion drew on automatically, while if nothing was done on the day assigned to hear sentence for the second time ' it is said to be concluded in the cause ' ipso facto!'(4)

The judge was then informed about matters of fact and law and execution of sentence could then be demanded and the losing party cited to show cause why sentence might not be put in execution. (5)

It only remains to trace these steps in procedure in the cause whose opening stages have been already indicated.

Here is an example of the proctor asking for the first assignation

(I) ' Audience ' 1570-74 F 160. (2) Idem F 162. (3) Conset Part IV. Chap. I. Sect. 3. (4) Idem (5) Idem

to hear sentence.

' And further the judge at the petition of Mr. Farley assigned to hear sentence in this cause etc. on Friday next, these hours and place in the presence of Mr. Stocke.' (I)

On the first assignation of simple sentence Mr. Stocke spoke against the sayings and depositions of the witnesses , and then Mr. Farley asked for the second time that sentence be assigned, the judge then assigned to hear sentence on Friday next after Whitsun. (2)

On the day assigned to hear simple sentence ' Mr. Stocke asked that sentence be given and justice done in this cause in the presence of John Farley, proctor of the said Edward Holme and Anne Holme alias Constable who made a similar petition. And then the judge gave, read and promulgated a certain definitive sentence in the said cause and pronounced that the marriage between the said Edward and Anne which had been contracted and solemnized and had been consummated was true and pure matrimony and so the boy called Henry....was and is (legitimate) and he decreed and declared that they, Edward and Anne were free from the instance and importunity and other vexation and perturbation of the said Mr. Stocke, as appears more plaintly from the tenor of the schedule of the said sentence.'...' and then Mr. Farley exhibited his proxy which is in the registry for the said Holme and Holme and made his party for them, and at his petition the judge decreed letters testimonial. (3)

(I) ' Audience ' 1570-4 F 162. (2) Idem F 165. (3) F 168.

CRIMINAL CAUSES.

Conset says that there were three different ways of proceeding in causes of correction, by inquisition, accusation , and denunciation. (I)

' Inquisition is the searching out of some crime made by the superior in respect of those who are subject to his jurisdiction. But it cannot regularly be made except a fame or rumor is noised abroad and that by a person of credit.' (2) If an ordinary heard that anyone had committed a crime or was persisting in an erroneous opinion, or was suspected of doing so he could cite the offender to appear even if he had not been detected by the churchwardens, to answer certain articles ' touching his Soul's health' and especially concerning a particular crime. (3)

There are several examples of this kind of citation, here is a ' Citation to cite someone by the tenor of the presents (to answer) certain articles ' from the Bodleian Precedent Book.

' The Official etc. to Mr. Laurence Baldon chaplain. Greetings. We cite you peremptorily by the tenor of the presents and through you Mr. W. O. chaplain there and will order and firmly enjoin you that you cite him that he appear before us or our Commissary in the greater church of York in the Consistorial place there on Wednesday next before... next coming after the date of the presents to reply personally to certain articles concerning his mere soul's health and to be sworn by everything to obey.' (' iuri per omnia ' an elusive phrase, probably referring to the oath taken to obey the mandates of the church.) ' Know that upon the

(I) Conset Part VII Chap. I. Sect. I. (2) Idem. (3) Idem.

the serving of the presents upon you we will that you put full faith in the Lord in the bearer of these , our messenger in this part. Given at York etc.' (I)

When the cited party appeared the ordinary might give articles to him out of his mere office concerning the offence and the rumour. The offender might then be compelled to take an oath to answer to ' the truth of his own proper fact and his credulity in the fact of another.' (2) If he refused this oath he was admonished to take it three times and excommunicated if he refused. Once he had taken the oath he was examined on articles. Although says Conset, he need not answer articles which might incriminate him he must answer any articles concerning the rumour that he had committed the crime . (3) If he refused to answer or answered frivolously he was declared to have confessed the articles in penalty of his contempt and proceeded against on the assumption that he had confessed them. (4) It is interesting to reflect on the difference between the canon and civil law and the English common law which is displayed by this point of procedure. If any Englishman or Englishwoman being tried by the common law refused to plead the only solution that the common lawyers could find was to have them placed between two boards and then have weights placed upon the boards until a species of ' caneton a la presse ' resulted. People were frequently torn in pieces during this process, and one of the hands of Margaret Clitheroe , a York recusant during this period , is still preserved, having apparently been

(I) Bucks. Archd. M.S. d. 4. F I3. (2) Conset (3) Conset Part VII Chap. I. Sect. I. (4) Idem.

wrenched off during the ordeal. Incidentally her refusal to plead indicates that the poor woman did not die a martyr to her faith, for if she had wished to she might have confessed and been hung. In spite of the title of ' Blessed ' conferred upon her she refused to confess her recusancy, probably in order that her property might thus devolve on her husband, instead of being confiscated.

If the defendant confessed the common fame or it was proved he was obliged to answer the articles , even should they incriminate him. If he refused to answer he was pronounced as having confessed as before. (I)

If the defendant confessed the fame , but denied the crime a competent time was assigned to the necessary promoter of the office to prove the articles and proofs were produced as in ordinary causes. The defendant was admonished to appear at all the general sessions of the court until sentence was pronounced. Witnesses could be produced and excepted against. If in the end the common fame was proved or confessed the defendant might be enjoined purgation. (2)

Witnesses were usually produced to prove the common fame, and the judge might administer interrogatories to them if he thought they were untrustworthy. If only the fame were proved the defendant might still be enjoined purgation. If he failed in his purgation , or if he were found guilty, he was enjoined a penance. If he proved innocent he was restored to his former fame and credit, and dismissed with charges.(3)

The same procedure was carried through where a ' necessary promoter

(I) Conset Part VII Chap. I. Sect. I. (2) Idem. (3) Idem.

of the office ' was assigned. (I) At York this meant the assignment of a proctor , usually Mr. Stocke.

Here is an example of the ordinary objecting certain articles to a cleric.

' On which day hours and place the same venerable man Mr. Robert Lougher doctor of laws, objected to the same John Jackson then appearing personally before the judge the following articles out of his mere office, to which he gave his replies by virtue of his oath as follows.

I. In the first place he objected to him that he was and is of the parish of Burton Agnes in the diocese of York, notoriously subject to this jurisdiction.

2. Item that he has committed the crime of fornication or adultery within the year or term last past, having a wife living , within the diocese of York , with several other women besides his own wife , and principally with Isabell Story, Isabell Clerke, Margaret Ecclestone and Jane Pockley, and has wickedly and publicly boasted of this deed.

3. Item. That there is a public rumour and fame about all and singular the premisses within the said parish of Burton Agnes aforesaid and in othern neighbouring places in the diocese of York.'

The personal replies made by the said Jackson to these articles.

I. As to the first he said that it is true.

(I) Conset Part VII Chap. I Sect. I.

2. As to the second he replied that he denied it to be true in any part except in that he had a wife living.

3. As to the third he said there was a rumour in the articled places.' (I)

The judge thereupon enjoined him that he should undergo purgation. Sentence might either take the form of a suitable and condign penance, deprivation, if the offender were a cleric, or simple admonishment. If the judge thought good he might enjoin to the offender certain articles which were to regulate his conduct for the future. For instance the judge enjoined to a clerical offender as follows.

' On which day and place the judge enjoined to the same Mitchell , being personally present in judgement, under pain of deprivation from his said rectory ' that from henceforth he do not hunt nor hawke either at his beneifece or els where and that he do not at any tyme hereafter receive or harbor or relieve one Norfolke late prebendarie of Worcester nor any suspecte prieste of papistrye.' (2)

ACCUSATION.

If anyone had committed a crime and had not been denounced or presented for it and the ordinary had not proceeded against him by way of inquisition ' any person (who offers himself ready to pay the party to be convened his charges if he doth not prove the matters objected) hath interest, voluntarily to implore and promote the Office of the judge and may call the delinquent to answer articles and may administer articles to him

(I) ' Chancery ' Crt. Bk. I575-79 F 95. (2) ' Audience ' Crt. Bk. I570-74. F I56.

when he appears , in the name of the judge and of his office promoted and may accuse the delinquent.' (I) This was a plenary cause and procedure was the same as in inquisition. If the plaintiff did not succeed in proving the crime but proved that the defendant was rumoured to have committed the offence he would obtain sentence that purgation ought to be enjoined and that the defendant was to be condemned in charges of suit. (2)

A cause of this sort would be set out as follows.

' Office of the judge promoted by Thomas Tailor against John Tennant and Grace Tailor of the parish of Horton because of the crime of fornication or adultery committed between them as is pretended.' (3) The promoter of the office was called the ' pars promovens ' or promovent. (4)

' The defendants in these causes ' says Conset ' (except certain causess such as are causes of symony, notorious usury and incest and all causes concerning the privation or deposing a clergy-mand from his benefice and orders) ought not to answer to the same because they are criminous positions ; yet ought he to answer what he believes, touching the public fame and it is to be proceeded in all things in like manner as upon an Inquisition.' (5) The type setter has evidently nodded over this passage, but his meaning is sufficiently clear.

Here is an accusation cause. As in causes of mere office articles could be enjoined to the convicted defendant.

' Office of the judge promoted by Roland Whitmore and John Bampton of the parish of Crophill Bushoppe, province of York, against John Porter, cleric

(I) Conset Part VII Chap. II. Sect. I. (2) Idem. (3) 'Audience ' Crt. Bk. I570-75 F I43. (4) Idem F I45. (5) Conset Part VII Chap. II. Sect. I.

pretended vicar there and also vicar of the parish church of Coliston Basset , York diocese.

On the act of appearance. On which day hours and place there appeared personally the said John Porter,and Mr. Robert Lougher considering and pondering the matter exhibited against him by the said promovents and certain articles in writing with his replies to them and this cause and its merits, decreed as follows. viz.

I. In the first place ' it is enjoined to the said vicar that hee shall put awaie furth of his house all the wemen he keepeth, unless it bee his sister his aunte or some other of lx yeres of age accordinge to the iniunctione , within one monethe after this daie.

2. Also that he shall from hence furth keepe due houres and time for the readinge of his service in the church of Crophill, and that he shall reade the same distinctly and plainly to the edifienge of the people.

3. Also that he shall everie sundaie in the afternoone call the youthe of the parishe to catechise theim accordinge to thinunction geven in that behalf.

4. Also hee shall upon sondaie next after Michaelmas daie nowe nexte cominge make an apen confession of his faith before the people in the Churche of Crophill aforesaid affirminge and protestinge that the religion now set furth is accordinge to the woorde of God and to bee enforced

of all Christians and that he shall defie all poperie and popishe religion, protestinge and promisinge never to serve in the church or elswhere after that sorte.

5. Also that hee shal procure everie quarter of the yere a sermon to bee made by some preacher in either of his churches.

Lastley that he shall see his house well and sufficiently repaired and that out of hand and keepe hospitalitie accordinge to his habilitie.

And he is appointed to make certificat to the said most reverend father of his putting awaie of the said women before Allhallowtide next comyage under the handes of the churchwardens of Colliton Basset.

And hee is commanded to bringe in to my Lorde's grace his usuall booke of praier mencioned in tharticles against hym objected with the said certificate. And the said John Porter is condemned to the complainantes in tenne shillinges costs and monished to paie it unto them.' (I)

DENUNCIATION.

Denunciation was the procedure used against persons presented by churchwardens . The churchwardens made presentments at the visitations of their ordinaries of people who had broken the ecclesiastical laws. The persons presented were cited to appear upon some competent day to be assigned by the judge to answer articles toughing their soul's health, and especially certain crimes for which they had been presented. When this citation

(I) AB 27 F 220.

was executed and returned the judge signified to the party by word of mouth the words of the presentment, objecting to him that he had been presented for such a crime and that there was a rumour that he had committed it. (I) The defendant was obliged to answer concerning the rumour. Even if he denied the crime and the rumour canonical purgation might be enjoined him. What purgation consisted of will be seen in the following section.

PURGATION.

Purgation was the judicial taking of an oath by an accused person who was accompanied in this oath by a number of his neighbours, who swore that they believed him innonent of the charges laid against him. Procedure was as follows. The judge asked the defendant why canonical purgation should not be enjoined to him and assigned a time for him to purge himself under the hands of four, six, or eight honest men of the parish, ' according to the quality of the person and the weightiness of the Crime presented, and the infamy.' (2) He also decreed that all and singular persons who wished to oppose this purgation should be cited by public ediot, or letters proclamatory, as they were sometimes called at York. This was a citation denounced publicly in the parish church of the defendant calling on him to appear at the day and place assigned to propound and object in due form of law against the purgation and the compurgators (i.e. persons taking the oath along with the defendant.) to be produced. This ediot specified the crime of which the defendant was accused and the day, place

(I) Conset Part VII Chap. III. Sect. I. (2) Idem.

and compurgators. It was denounced by the rector or vicar of the parish church in church during divine service for six days before the day on which the purgation was to take place. This citatory edict was certified by the oath or authentical certificate of the mandatory. Here is an example of a judge enjoining compurgation to a defendant.

' Wherefore the judge enjoined to him, John Jackeson to make his purgation upon the things objected to him under the hands of five honest men who are his neighbours and have some notion of his life and conversation on Friday next in eight days between the hours of nine and eleven before midday of the same day. And a citation was decreed against the opposers against the same day and place in the consistorial place within the church of York.' (I)

When the ediot had been returned with a certificate the defendant was called publicly and asked by the judge if he had his number of compurgators ready in court. If he had the opposers of the purgation were called to come forward and make any objection they might have to the purgation. If none came forward they were pronounced contumacious and in penalty of their contempt the judge decreed that it should be proceeded with the purgation, and that no opposers were to be heard in the future. The party then produced his compurgators, asked that the registrar should write down their names , offerred himself ready to take an oath that he was innocent and asked that his compurgators should be admitted and right and justice be done to him. The judge then recited the penalty

(I) ' Chancery ' Crt. Bk. I575-79 F 95.

of perjury to the compurgators and administered an oath to the defendant to the efffect that he had not committed the crime of which he stood accused and was not guilty. The compurgators whre then asked if they would take the oath, if they agreed the party was pronounced as having canonically purged himself, and was restored to his former credit and repute and dismissed from the office. (I) Here is an example of purgation where the defendant succeeded in purging himself.

' The said Bayldon has it to purge himself about the crime objected under the hands of five honest men who are his neighbours and a proclamation against opposers has gone out. On which day hours and place the said Thomas Bayldon appeared personally and introduced letters proclamatory which had formerly gone out in this part and had been executed on the seventeenth of this present June, as (appears) from their certificate etc. And when all and singular having or wishing to object anything against the purgation of the said Thomas Bayldon had been publicly summoned and had not appeared, the judge pronounced them contumacious at the petition of the said Thomas Bayldon who accused their contumacy and petitioned etc. and decreed that in penalty of their contumacy it should be proceeded etc. and then the said Thomas Bayldon produced as compurgators William Pyckarde, Walter Furnes, Nicholas Tente and Richard Garnett in whose presence the said Bayldon (when the penalty of perjury had first been explained to them) took a corporal oath (the Evangels) having been touched that he had never had carnal knowlddge of Alice Smythe the wife of Thomas

(I) Conset Part VII Chap. III. Sect. I.

Smythe and the said compurgators similarly took an oath, (the Evangels) having been touched , that they believed in their consciences that the said Thomas Bayldon had taken a true oath, whereupon the judge at his petition decreed that he had legitimately purged himself and the judge at once restored him to his former good fame in as much as he lawfully could. And then the judge at the petition of Mr. Fothergill condemned the said Bayldon in expenses and taxed the bill exhibited by the said Mr. Fothergill to the sum of forty six shillings and eightpence and warned the said Thomas Bayldon to pay the said sum in this place in fifteen days these hours and place and that this sum be paid and satisfied to the hands of the said Mr. Fothergill.' (I)

The form of a letter of dismissal after purgation is given by the Cambridge Precedent Book. Here it is.

' Letter of purgation and correction.

Know all of you that whereas a certain chaplain was impeached before us T. of W. about the sin of the flesh with certain persons in a judicial manner and he appearing personally before us on a certain day and place assigned by us to him , admitted the article with reference to the said J. , upon which we corrected him canonically, but expressly denied the article about another person, and purged himself canonically upon it , we dismiss him by the presents , sealed with out seal as corrected with reference to the one and as having purged himself with reference to the other. Given etc.' (2)

(I) AB 52 F II5. (2) Cam Addit. M.S. 3II5 F 2I6.

Purgation should be regarded as a sort of legal fiction whereby if a anyone failed to make his oath successfully he was held to be guilty. The ' short discourse, being the judgement of several of the most learned Doctors of the Civil Law, concerning the practice of their courts.' (I) says very pertinently. ' He is by law enjoined his purgation. At which time of purgation he must answer directly clearing or convicting himself de veritate vel de falsitate ipsius criminis objecti. And his compurgators are to swear de credulitate(weighing his fear of God and conversation in former times) that they believe he hath taken a true oath. Which if they do then he is holden clear and dismissed. If he fail in his purgation then fictione juris he is taken to be guilty of the crime and to be reformed.' It was really more of a testing of the neighbourhood's opinion of a person than a trial. Accordingly a couple might be arraigned for incontinency and one might make a good purgation, while the other failed to do so. Women were obliged to have other women as compurgators, and consequently the view taken by the two sexes of a particular crime was occasionally diverse.

So far Conset's view of the matter has been given. It may however be useful here to refer once more to the ' short discourse ' which points out that ' if any other man besides the ordinary will prosecute , making himself party to prove the crime, then the party convented , albeit he must answer upon his oath to other articles and principally touching the very crime objected , yet by law he is not bound to answer upon oath any articles of the crime itself.

(I) B.M. M.S.S. Room Cott. Cleo. F. I. (Quoted from Strype's'Whitgift.')

But if the ordinary , at no man's instance, upon the fame presented, procede ex officio, if the party deny the crime objected then he is by the law enjoined his purgation. At which time of purgation he must answer directly clearing or convicting himself de veritate vel falsitate ipsius criminis objecti.' (I)

The use of the oath ' ex officio ' whereby a man might be required to answer directly to articles concerning his complicity or innonence i of a crime infuriated the Puritans probably more than even the square cap , the surplice, or the use of the cross in baptism. One of them called it a ' prophand and more than heathenisshe manner of inquisition not onlie repugnante to God and Christian religion, but contrarie also to the rules and canons of the Anti Christian church of Rome.' (2)

Surely he argued a man need not answer on oath about his activities ' if it were otherwise who in the Commonwealthe would goo Scot free ? for yf men should be examined uppon their oathe... they must forsweare themselves foully or what they have will scarce answer the penaltie.' (3)

Here of course the Puritans could f draw on the almost divinely inspired common law for confirmation , for one of its principles was that nobody need answer directly to questions which might incriminate him , and a very good principle it was , if you meant to be a criminal.

PENANCE.

' We may define Pennance,' says Ayliffe ' to be a certain act of punish-

(I) B.M. Cott. Cleo. F. I. (2) ' A briefe treatise of oathes exacted by Ordinaries and Ecclesiastical judges ' B.M. M.S. Room. Cott. Cleo. FI/50. (3) Idem.

ment or vengeance, whereby the party offending is punish'd for some crime committed by him, in the Ecclesiastical Court.' (I)

The ordinary form of penance enjoined in Elizabethan times consisted of the assumption of some kind of humiliating dress , a public appearance in the parish church, and a public confession. The details of the penance varies according to the offence and possibly according to the judge's whim. The Bishop of Wells, Turner, causes some scandal by making a penitent do his penance in one of those square caps which were the source of so much bitter feeling at the time. In addition penance could be private or public, though there does not seem to be any evidence of private penance at York. Here is an example of the injunction of penance in the courts.

' And further the judge at the petition of Mr. Standeven enjoined to the same Michael Fartheinge to perform penance according to the tenor of the sentence made in this cause in the church of Nafferton on the first Sunday after the Feast of St. Hilary next, during the time of divine service, and to certify it on Thursday then next following, these hours and place.' (2)

A schedule of penance was drawn up by the court describing what form the penance was to take, and given to the culprit, who returned it to the court along with the certificate of the curate or incumbent of the parish church where he had done penance that it had in fact been perform-

(I) Ayliffe P. 420. (2) Consistory Crt. Bk. I586-87 F 3I.

-ed. This certificate might be made by an apparitor. (I) So much for Hockaday's account. At York however oral instructions were frequently given instead of schedules of penance. The judge gave the following instructions to two persons who confessed to incontinence, during an Edwardian visitation of the Dean and Chapter.

' That upon Sonday next they salbe redie in the parishe churche of Litill Driffield, he having one lowse kircheff upon his heid , bare legged , his shoes upon his feete and a doublet with a sleaveless cote and a sheite aboute his mydle. And she shall have hir peticote with a sheite aboute hir mydle bare faced, a lowse kirchef apon hir heid and hir heyre o lowse , having hir hoose and hir shoes upon hir. And at such tym as the parish shall coom downe in the body of the churche to sing or say the King's majesties latynye they shall kneel before the parishe, he on the ryght hand and she on the left and ther shall knele upon the gresse (rushes ?) before the highe auter until suche tyme as the prieste goo to rede the homylye and the priste that daie shall reide parte of the homylie of advowterie. And then they shall goo and stand before the pulpitt where the priste shall reade the homily havinge their faces to the easte, and there shall stand until the half part of the homilie be redd. And lykewise he shall be at greate Driffielde the secunde sundaie and lykewise the third sundaie at South-cave.' (2)

(I) Hockaday . F. I8. ' Gloucester Consistory Court.' (2) Dean And Chapter Library. ' Visitation Book' I472-I550.

The curate or incumbent wrote out a certificate of performance of the penance on the back of the schedule and gave it to the penitent, who brought it into court on the day assigned. Here is an example.

' Last day of May, I587. A schedule of penances which had been extracted was introduced with certificates on the back of it, by which it appears that the said Richard Chapman and Mary Fowle had penitently performed the penances enjoined to them as was enjoined to them, wherefore they were dismissed.' (I)

If the culprit who had been enjoined penance refused to perform it or neglected to certify that it had been performed he would be declared contumacious and proceeded against accordingly. (2)

Grindal's views on penance, which probably represent the more puritanical element in the church can be gathered from a paper giving his 'directions.'

' If the ordinary see cause to commute the wearing of the sheet only, for other commutation I wish none, then appoint a good portion of money to be delivered immediately after penance done in form aforesaid by the penitent himself to the collectors of the poor.' (3)

Penance could be commuted for a money payment. This was quite legal and had in fact been the order of things for a very long time, if Ayliffe can be believed. (4) It was however a proceeding which was displeasing to certain elements in the Church and a Canterbury provincial

(I) AB 52 F I03. (3)' Grindal's Remains ' P 455. (2) Hockaday ' Gloucester Consistory Court.' (4) Ayliffe's ' Parergon ' P 420.

constitution of 1597 forbade commutation of solemn penance except in causes of an important nature. (1) Here is an example of commutation of penance. ' There appeared personally Thomas Farcher of Farneley in the parish of Otley gentleman and replying to the thing objected to him confessed... that he had committed the crime of fornication with a certain Ellen Mosely and submitted himself to the correction of the lord judge. And then the judge enjoined to him to perform penances because of the crime he had now confessed in the parish church of Otley in the way and form as is described in the schedule to be made. Afterwards however the said venerable man Mr. John Bennet, Doctor of Laws aforesaid , with the consent of the said Mr. Fawkes and with the mediate consent of the most Reverend Father, Edwin Archbishop of York, decreed that these penances [illegible] should be commuted for a money payment and that the same Mr. Farcher should give the sum of three pounds, six shillings and eight pence to the churchwardens of the parish of Otley aforesaid to be distributed to the poor of the same parish of Otley aforesaid by Mr. Burton the preacher and Mr. Mason the curate there and by the same churchwardens and he assigned to him to certify about the payment of the said sum and its distribution on Friday next after the Feast of Holy Trinity next etc. ' (2)

The judges might decide to decree commutation of penance for a variety of reasons. In the case of John Foster , who had had an illegitimate child by a servant girl, Matthew Hutton ' at the humble petition

(1) Ayliffe P. 414. (2) AB 52 F 240.

of the said John Foster, in as much as the said John Foster had before the time of the crime committed and confessed taken an honest wife with whom he had lived honestly and had accepted and reared the child, and out of certain causes moving him in this part, commuted the corporal penance for a pecuniary fine.' (I)

Some indication of how the fines extracted upon commutation of penance were spent is given in the following account.

' The some of V.s beinge thone halfe of' the some of X. s imposed upon the said Richard Beamonde and Margaret Ware mencyoned in this cause for the redempcion and commutation of the corporal puhishment inflicted upon them for the cryme of fornicacion by them committed ..... was distributed in pious usus accordinge to the direction of lawe and equity in that behalfe and especiallye that the said some of fyve shillings was distributed by Avery Rooe and William Mearinge the churchwardens or parishioners of Wilfrod aforesayd and by them given to and charitably disposed to one Dorothye beinge an old widdowe and blinde, Alice Wanie a poore widowe, Alice Rooe, an old lame widow and other poor and miserable people of the same parishe. And that the other V.s was distributed and geven unto the use of' the poore prisoners then being in Notts. gaole.' (2)

Here is an example of a ' Citation to receive penance.'

' The (Commissary of) the Lord Official etc. (cite such a person) next coming to receive penance humbly for his confessed crimes and to be sworn if need be.' (3)

(I) AB 52 F I82. (2) AB 52 F 35I. (3) Cam. Addit. M.S. 3II5 F I8.

CHAPTER SEVEN. MATTERS OF PROBATE AND ADMINISTRATION.

On the whole little has been written about matters of probate and administration during Elizabethan times, yet they were one of the most important parts of the jurisdiction of the ecclesiastical courts. They constituted, as it were, the bread of the ecclesiastical lawyers, while their butter was spread for them with a lavish hand by a succession of grasping tithe farmers, litigious parsons, husbands wanting new wives and the slanderous gossips of both sexes. Even in the black days of the Commonwealth , when the bishops' courts had been swept from the land, and it seemed as though the magic words ' Excommunicavit eum in scriptis,' would never ring out through a court room again , when evenn the very whores called the civilians ' civil villains ' and their courts ' the bawdy courts ' Proctor Busybody could still comfort himself with the reflection that he would ' keep a horse than can smell out a testament ' while ' if my brother Copper Nose would die once I would be made free of the Girdlers, and beg the probation of citizen's wills. ' (I)

Because of their special importance and because the Bodleian Precedent Book may be regarded as being primarily a precedent book for forms concerning probate and administration these matters have been given special consideration. John Martiall, in compiling his book, departs from his usual procedure by bestowing occasional notes , too infrequent to be called a gloss, on various testamentary documents,

(I) Harl. Miscell. Vol. II P, 567.

indicating that he was familiar with and interested in principles of testamentary procedure. Moreover his book was compiled very largely from the records of a court which was exclusively concerned with testamentary matters, the Exchequer Court. There is another reason why probate and administration at York deserve special consideration ; the law or rather the custom of the province, differed from that in use in the southern province. One of the best and earliest writers on testamentary matters) - Henry Swinburne, dealt faithfully with this custom. He is in fact the best and almost the only authority for tit.(I)

In order to make the documents which follow more easy to understand and in order to prepare the way for the discussion of particular aspects of procedure a short introduction will be given, outlining testamentary matters as a whole. (2)

A will or testament was a ' voluntary and just disposition of what one would have to be done concerning his goods, and chattels, lands and tenements after his decease.' (3) It also contained the appointment of an executor. Not all wills were under the cognisance of the ecclesiastical laws, only those which concerned the disposal of goods and chattels ; any bequest by will of lands, tenements and hereditaments (4) with all questions arising out of them, were determined by the common law courts. Not everyone could make a last will, people whose

(I) Burn's ' Ecclesiastical Law.' Vol. II. P. 736. (2) Taken from Richard Grey's ' Ecclesiastical Law.' Titul XXIV. (3) Idem. (4) Chattels were ' all goods moveable and immoveable but such as are in the nature of a Free hold or parcel thereof .' Cowell's Interpreter. Hereditaments were 'all such things immoveable be they corporeal or incorporeal as a man may have to himself and his heirs by way of an Inheritance.' Idem.

mental state was such that it was supposed that they could not dispose of their goods in a responsible fashion, and those who were lying under some legal disability were excluded.

A will required to be witnessed by two witnesses at least. Proper witnesses were any persons who were not disallowed by the law. A woman might be a witness, so might a legatee, if he had already received or had renounced his legacy. The testament was published ; that is read aloud to the witnesses at the time it was made.

There were two kinds of testaments, written and nuncupative. A nuncupative testament was made ' when the testator doth by word of mouth only, declare his will concerning his goods and chattels, before a sufficient number of witnessew.' (I)

A will which left chattels differed from a bequest of lands and tenements (2) in that the former required only two sufficient witnesses the latter three or four. A married woman could make a will leaving goods and chattels with her husband's consent, but she could not leave lands. A testator might add to or subtract from his will by means of a codicil.

Every will had to receive probate. This was obtained by the executor appearing before his ordinary, and either simply swearing that the will was a good one, or by producing witnesses to confirm his oath by their testimony. A copy of the will, says Grey, was made on parch-

(I) Grey. Titul. XXIV.

(2) Grey. Titul. XXIV.

-ment and delivered to the executor under the ordinary's seal with the probate annexed.

Who the ordinary of a testament was depended on what was bequeathed by the will . If all the goods of the deceased were within the same diocese and jurisdiction in which the testator lived or died it was proved before the Bishop of the Diocese , his commissary, or before the Archdeacon or his Official, or before the holder of a peculiar jurisdiction, ' according as Composition hath been made with the Bishop or as Prescription directs.' (I) If the deceased had left ' bona notabilia' which, it may be recalled was ' Goods and chattels in some other diocese or dioceses or peculiar jurisdiction within that provinde,other than that wherein he died amounting to the value of five pounds at the least.' (2) If part of the goods of the deceased were in the diocese of the Archbishop, and part in a peculiar jurisdiction in the same diocese, two separate probates were required. If the goods were within two peculiars within the same diocese then the will was proved before the Archbishop of the same diocese. If all the goods were in a peculiar jurisdiction the will had to be proved before the judge of the peculiar.

Administration was the ' Management, committed by the Ordinary in Writing under Seal of the goods and chattels of one that dieth intestate, or hath made a will without appointing an executor, or where the executor refuseth to prove the will.' (3) Administration was usually granted by the same ordinary who proved the will, when the deceased had died int-

(I) Grey. Titul. XXIV. (2) Idem. (3) Idem.

-estate . In a case where the party had died intestate and had left bona notabilia the ordinary was again the same as the one who would grant probate.

Administration was normally granted to the widow or the next of kin, provided the deceased had not been attainted of treason, or felony or had some other disability.

The ordinary took measures to secure himself against possible suits on the part of parties having interest in the administration by takinga a sufficient bond from the administrator that he should make a true and perfect inventory, and administer according to the law, and make a just account, also that he should pay the legacies according to the judgement of the ordinary, and give upo the administration in the case of the will being proved. (I)

The inventory, which has been mentioned above, was taken in the following way. The executors or administrators joined themselves with some honest persons and wrote out ' a true and perfect inventory of the goods, chattels, credits, wares, and merchandise, as well moveable as not moveable.' (2) in their presence and with their help. This inventory was indented, that is cut across in a zig-zag fashion so that the two parts could be fitted together afterwards to ensure that they both belonged to the same document. One part of the inventory was presented to the ordinary by the executor or administrator who took an oath that it was a ' good and true ' inventory, the other he retained.

(I) This would occur in the circumstances described at the head of the the next page. (2) Grey's Ecclesiastical Law. ' Titul. XXIV.

The administrator was usually obliged to exhibit the inventory before the ordinary at some time left to the discretion of the ordinary, who might however release the administrator from this duty.

Any person might demand a copy of the probate and inventory and the ordinary was obliged to deliver it to them ' with convenient speed. '

If the executor refused to appear or refused to prove the testament the judge might commit administration ' with the testament annexed ' to the next of kin. If the executor afterwards undertook the executorship however the ordinary might revoke the administration. And executor might be compelled by the ordinary to undertake execution if he had interfered with the goods left by the deceased. If he had been left a legacy he could be compelled to execute on pain of losing his legacy.

Not every creditor or person who wished to undertake administration was obliged to take the executor's or administrator's oath before the judge himself. A judge in a case of ' reasonable impediment ' such as for example where the executor was an old man, or ill, or where administration had been granted to a widow with children, might appoint a commissioner, some ecclesiastical person who lived near the party concerned.

There was little difference for practical purposes between an executor and an administrator. While there had formerly been differences between them, the act of 31 Ed. III had virtually put them on the same footing.

Generally speaking in cases of administration of an intestate's

estate the goods were divided among the wife and children of the deceased. Failing these relatives the estate went to the next of kin. Special provision was made at York for the eldest son or the widow, who received what was known as the ' reasonable portion.' The same provision applied to testaments. No one in the province could , in Elizabethan times at least, will away the ' reasonable portion ' from a son.

So much for matters of probate and administration generally.

WILLS.

The words ' will ' and ' testament ' although not originally synonymous, had become so by the time of this survey. The word ' will ' had originally applied to a document which bequeathed land , while ' testament ' applied to a document which bequeathed chattels. A will bequeathing land did not require an executor. (I) It is worth remembering that the principle that land could be bequeathed by will had only recently been revived in Elizabethan times, Coke maintained (unhistorically but understandably enough) that no lands or tenements could originally be bequeathed by a will and testament. (2) Gradually the custom grew up of bequeathing the profitss of land, and by 27 H.8. lands held in socage could be left by will. Eventually even freeholds were declared to be devisable. During the middle ages however the church courts had set their seal upon procedure and form in testamentary matters.

The wills which were proved before the ordinaries were those

(I) Burn's ' Ecclesiastical Law. ' Vol. II. 504. (2) Coke. I. Inst. III. quoted in Burn 515.

which bequeathed chattels, ' goods chattels, rights credits and portion,' as the York form has it. (I). Swinburne says ' the testator may devise all goods and chattels which he hath in his own right.' (2)

Not everyone could make a testament. Personal estates might be devised by a boy of fourteen and a girl of twelve, but children below these ages might not make wills. (3) ' An idiot ' says Swinburne ' is justly excluded from making a testament. ' (4) Neither could ' mad folks and lunatik persons ' make a testament , at least during the time their madness was upon them. (5) The same principle applied to those ' overcome with drink.' (6) Anyone ' very simple and sottish so that he may be easily made to believe things incredible and impossible and hath not so much wit as a child may have of ten or eleven years of age ' might not make a testament . (7) Whomsoever, says Swinburne ' is lawfully convicted of high treason , by verdict, confession, outlawry or presentment besides the loss of his life shall forfeit to the king all his goods and chattels, and all such lands tenements and hereditaments as he shall have in his own right... and so consequently is intestable.' (8)

Similarly an outlawed person was out of the law's protection as well as the King's and all his goods and chattels were forfeited, so he could not make a testament. (9)

(I) ' right ' was ' any title or claim either by vertue of a condition mortgage or the like ' Cowell. (2) Swinburnn 185. Quoted here as elsewhere from Burn. (3) Burn Vol. II. P. 505. (4) Swin. 8. (5) Idem 76. (6) Idem 83. (7) Idem 78.80 (8) Idem 97.(9) Idem 107.

Any person who committed suicide made his testament void. (I) An excommunicated person might make a testament, unless he was under anathema. (2)

In spite of attempts by the ecclesiastical authorities to chagge matters notably Archbishop Stratford's constitution (3) the common law, through parliament, had declared married women incapable of making a will of goods and property, because all her property belonged to her husband.(4) She could however leave what she saved out of her pin money ' by management and good houswifry.' (5)

There were two kinds of wills, written and nuncupative . ' A nuncupative testament ' says Swinburne ' is (made) when the testator without any writing doth declare his will, before a sufficient number of witnesses.' (6) An example will be given later.

The form of sixteenth century wills is probably too familiar to need much description . The testator usually began by asserting that he was ' not feeling any healthe or memory impaired .' (7) or that his ill health had put him in mind of his own mortality ' finding myself greatly charged with diseases and yeares .' (8) Then he usually commended his soul to God , and gave directions for his burial, usually in his parish church. (9) These introductory clauses were followed by the legacies .

Two witnesses were required by the civil and common law to prove a written will of goods and chattels (I0) but on the other hand if it was certain that the testament was written in the testator's own hand

(I) Swin. I06. (2) Idem I09. (3) Lindwood I73. (4) Swin. 88. 89. (5) Idem 95. (6) Idem 58. (7) Y.P.R. 37/ 280. (8) Idem 33/ 4I0. (9) Idem. (I0) Burn P. 524.

no witnesses were required. (I)

At the time of the making of the testament the testator showed the testament to the witnesses saying'' This is my last will and testament ' or ' Herein is contained my last will ,' this is sufficient without making the witnesses privy to the contents thereof , provided the witnesses be able to prove the identity of the writing.' (2) At the end of the testament one or more executors were appointed, the testator confirmed that this was his last will and set his seal to it. This was usually followed by the witnesses ' marks or signatures.

A deposition in the Exchequer Court Book describes the witnessing of a testament, and its publishing before the witnesses.
' He saith that about a fortnight before Michaelmas last past he this deponent was workinge with the said Mr. Dallariver at whiche tyme one Christopher Smyth servante unto the said Mr. Dallariver called this deponent into the howse to come and speake with his said master, whiche was in his hall howse called Filmorehall, and when this deponent cam unto hym he asked the said Mr. Dallariver howe he did and he said ' craysed and seke ' and moreover held up a writinge in his hand and said ' This is my last will and testament wherein I have given all my goods and lands unto my bastard doughters, and I desire yowe to bere witnes of the same yf ned stand. ' And presentlie they tooke his Ringe of his fynger and sealled the said wryttinge.' (3)

Good witnesses to a testament were generally speaking such persons as could be described as trustworthy people.

(I) Swinburne 353. (2) Idem 52. (3) RVII A 37 F 160.

A testator could add or subtract from a will by means of a codicil, a clause added to it. ' A codicil ' says Swinburn ' by intendment of law is either to alter, explain , add or subtract something from the will.' (I)

A later testament always cancelled a former, but a man might leave various codicils, provided they were not contradictory. (2) Codicils might be proved, as wills were.

A man might give away goods during his lifetime , or make a ' donacio causa mortis ' or a ' gift in prospect of death.' The Cambridge Precedent Book gives an example of a ' gift of goods during life.' (3)

The testator usually assigned an executor or in his will. No one could act as executor until he had reached the age of seventeen, but an infant or unborn child might be appointed executor. (4) In the latter case the ordinary might appoint his tutor to perform the execution o for him. (5) A married woman could not act as executrix without her husband, but she might do extra judicial acts such as paying debts. (6) An example of a wife acting as executor by special license from her husband occurs in one of the forms in the Bodleian Precedent Book.

The duties of an executor were summed up by Swinburne - ' a person is then said to administer as executor ... when he doth perform those acts which are proper to an executor, as to pay the debts due by the testator , or to receive any debts due unto the testator or to give acquittances for the same with other such acts.' (7)

Another provision which a testator at York was likely to make in

(I) Swinburne I4. (2) Idem I5. (3) Cam. Addit. 3II5 F I00. (4) Swin. 33I. (5) Swin 4I7. (6) Idem 4I7, 4I8. (7 Idem 469.

his will was the provision of a tutor for his son. This seems to have been peculiar to York. ' In divers places within this realm and namely throughout the province of York there doth remain a certain resemblance of that power and determination of the Civil Law ; as in many other things so also in the assigning or appointing of tutors by their testaments or last wills , ' ' by general custom within the province of York the father by his will or testament may for a time commit the tuition of his child, and the custody of his portion ; which testament and assignation is to be confirmed by the ordinary .' (I) If a woman was left a widow with a child she might also appoint a tutor. (2) And if says Swihburne ' there be no tutor testamentary at all, then may the ordinary commit the tuition of the child to his next kinsman demanding the same, according as in administration where any dieth intestate.' (3)

A tutor could be assigned to a boy until he had reached the age of fourteen, and to a girl until she had reached the age of twelve. After those ages they could choose their own tutors. (4) By the general custom mentioned already a tutor could be assigned at any time and for any time, but he could not act as tutor until he was confirmed by the ordinary as tutor. (5)

A tutor could also be assigned within the province to an unborn child or to an idiot or a lunatic. (6)

The duty of a tutor was summed up by Swinburne in the following words. ' The office of a tutor is to provide that his pupil be honestly

(I) Swinburne 2I0. (2) Idem. (3) Idem 2II. (4) Idem 2I5. (5) Idem. (6) Idem 2I2.

and virtuously brought up and to provide for him meat, drink, cloaths lodging and other necessaries , according to the child's estate, conditions and ability. ' (I) His duty also consisted ' in the good and faithful administring or disposing of the goods and chattels of the said pupil , that is to say, the tutor may not commit anything that may be hurtful, nor omit anything that may be profitable to his pupil and in the end must restore unto his pupil all the goods and chattels and give an account of them. ' And it is generally observed within the said province of York that every tutor as well testamentary as other appointed by the ordinary doth enter into bond with suerties to the effect aforesaid, according to the discretion of the ordinary.' (2)

A tutor might sell goods belonging to the pupil (as the child was called) which would not keep, such as hay for example . The rest had to be kept till the pupil was of lawful age. (3) The tuitorial system was probably open to many abuses. The proctor of a tutor who was being proceeded against in the York courts defended him in the following terms. ' Since he undertook the tuicion of the said Francis (he) haith ministred and provided unto him sufficiente and conveniente meate drinke apparell and lodging and other necessaries meete and fitt for suche a childe beinge of his birthe and aige and otherwise well and convenientlie governed him as a good tutor. And if at anie tyme he did go barefooted the same was the rather for his healthe because his feete or legs were

(I) Swinburn 2I7. (2) Idem. (3) Idem.

were sore, and if he did lye in a place where the ground woorke of a chymney was begoon the same was not inconveniente nor undecent for this partie dothe propounde that a bedsteade was there sett up for him.... and the placinge of the said Francis there was but for a small tyme viz. a quarter of a yere or thereabouts and upon necessitie because he was not then in good health but troobled with muche felom ?(phlegm ?) ... whome he did there place necessarelie for ... his owne ease and quietnes and for avoyding infection towards his owne children.' (I)

PROBATE. THE ORDINARY FROM WHOM IT WAS OBTAINED.

The first duty of an executor was to prove the will ; Regularly (that is by the civil law) testaments ought to be insinuated to the official or commissary of the bishop of the diocese within four months next after the testator's death.' (2)

In order to insinuate or publish the will the executor had to appear before his ordinary. The ordinary of a will varied according to circumstances. Probates of wills bequeathing goods and chattels had belonged ' to the county court, or to the court baron of the respective lord of the manor where the testator died.' (3) In a few special cases they still belonged to the lord of the manor, but more usually the ordinary was the bishop, the archbishop , or the holder of a peculiar. ' Generally ' says Swinburne ' the person before whom the testament is

(I) RAS 60 F 22. (2) Swinburne 447. (3) Burn's Ecclesiastical Law 601.

to be proved is the bishop of the diocese where the testator dwelled or his officer.' (I) Sometimes the probate belonged to the Archdeacon, though Archdeacons as such had no concern with wills. Some of them had power to grant probate and commit administration by prescriptive right however. (2) ' But ' says Swinburne ' there are also certain peculiar ecclesiastical jurisdictions where by a prescription or composition or other special title the probation and approbation of the testaments of such as dwell and die within those places doth appertain to the judge of that peculiar.' (3) There were complaints against the testamentary jurisdiction of the peculiars, which Canon 126 of the Canons of 1604 tried to remedy by ordering the holders of the peculiars to send the original testaments to the bishops or the Dean and Chapter under whose jurisdiction they were, and to keep only copies.

If a man had left bona notabilia the Prerogative Courts of the two Archbishops had jurisdiction over his estate with regard to probate. In order to found the prerogative jurisdiction it was necessary for a deceased person to have left more than £5 of bona notabilia. The goods left by a traveller were not to be counted as such.

There were considerable complaints against the way in which the Canterbury Prerogative tried to beat up custom by citing people over whom they had no real jurisdiction. Canon 92 of the Canons of 1604 referred to this and tried to remedy it .

If someone had left bona notabilia in two provinces ' the will must

(I) Swinburne 447. (2) Gibson 478. (3) Swin. 427.

be proved either before both metropolitans , if within each of their jurisdiction there be bona notabilia in divers dioceses, or else if there be not so in any of the places, then before the particular bishops in those several dioceses where the goods are.' (I)

If the deceased person had left goods in a peculiar and in an archbishop's or bishop's jurisdiction the will required two probates, one before the Commissary of the Archbishop or Bishop, and one before the Commissary of the holder of the Peculiar.

MANNER OF PROVING THE WILL.

The manner of proving testaments, says Swinburne ' is of two sorts ; the one is called the vulgar or common form, the other is termed the solemn form, or form of law.' (2) The ' vulgar or common form ' was as follows. After the death of the testator the executor presented the testament to the judge and in the absence of those who had interest and without citing or calling them produced witnesses to prove the testament, who bore witness on their oath that the testament exhibited was the true , whole and last testament. The judge then annexed his probate and seal to the testament and confirmed it in this way. (3) Usually only the oath of the executor was enough to prove the will in common form ' but within the province of York one witness to the will is also sworn.' (4)

Here is an example of the common form of probate of a testament.

(I) Burn's ' Ecclesiastical Law.' P. 604. (2) Swinburne 448. (3) Idem. (4) Burn. P. 615.

' 18th day of February in the Year of Our Lord 1572 before the venerable man Mr. John Gibson, Doctor of laws, Vicar General in Spirituals and Official Principal of the most reverend father Lord Edmund by divine permission Archbishop of York etc. the testament of William Harryson cleric, formerly while he lived rector of the parish church of Cawicke of the said diocese of York , deceased, f was proved by Peter Smith, John Gotte, and John Borset, witnesses named in the same testament and sworn before him in form of law . And then there appeared personally Richard Murton, cleric, rector of the parish church of St. Margaret, York city, and Robert Johnson of Selby, two of the executors named in the said testament and when asked by the judge if they wished to undertake on themselves the execution of the said testament they replied that they did not wish to do so and judicially renounced it and either of them renounced undertaking the execution of the said testament and the administration of the goods of the said deceased on themselves. The judge accepted this renunciation. And then Mr. John Broket, notary public appeared personally and exhibited his proxy in writing for Alfred Harryson the third executor named in the same testament and made his party for him and petitioned in the name of his proxy that the burden of execution of the said testament and the administration of the goods of the said deceased be committed to his master in his person. And then the judge at the petition of the said Mr. Broket approved the said testament and declared for its force and validity and committed administration of the goods,

rights and credits of the said deceased to the same Mr. Broket for the use of his said master and for him, Alfred Harrison in the person of his proctor, saving anyone's right when he , Mr. Broket had first taken an oath in the absence of his said master, on God's Holy Evangells , that the same Alfred Harryson would faithfully administer the goods, rights, and credits of the said deceased and would pay the debts and legacies of the said deceased and would exhibit (an account) . And then Mr. Broket under protest of adding, correcting , and reforming etc. exhibited an inventory of the goods of the said deceased.

Received for the mortuarie.

x.s.

due to my L. Grace.

John Gibson.' (I)

Before the other form of proving a testament is discussed it might be as well to say something further about mortuaries. They had been originally a form of recompense for personal tithes paid to the parish priest on the death of a parishioner. (2) By the time of Henry VIII as appears from the statute of Mortuaries , these payments were made to the ordinaries and varied in different jurisdictions. Moreover it was customary for some ordinaries to take mortuaries on the death of their clerics. The Bishops of Bangor, Llandaff, and other ordinaries in Wales are mentioned as having done so before the statute. (3)

Apparently this custom also prevailed at York. By the statute

(I)' Audience ' Crt. Bk. I570-74. (2) Ayliffe Parergon. P. 378. (3) 2I. H. 8. cap. 6.

mortuaries were regulated in future ; no mortuary was to be claimed for a child, a person not keeping house, a traveller, a stranger, or a person who did not have more than ten marks property. The mortuary for property worth up to £30 was to be 3/4d , for up to £40, 6/8d, and for up to £48 10/-. (1) It was noted after another probate that ' nor mortuary was paid because the debts exceed the goods.' (2) indicating that a mortuary was not a first charge, but a proportional payment on income.

The other form of proceeding in proving a testament, the solemn form, is now to be considered. It was longer, and more expensive. One of the two rascal proctors tells his friend that if anyone brought him a testament to be proved in common form, he persuaded them to prove it in solemn form , so as to increase his fees. (3) ' When the testament is to be proved in form of law ' says Swinburne, ' it is requisite that such persons as have interest, that is to say the widow and next of kin, to the deceased to whom the administration of his goods ought to be committed if he had died intestate are to be cited to be present at the probation and approbation of the testament ; in whose presence the will is to be exhibited to the judge and petition to be made by the party which preferreth the will and enacted for the receiving, swearing, and examining of the witnesses upon the same and for the publishing or confirming thereof ; whereupon witnesses are received and sworn accordingly and are examined every one of them secretly and severally not only upon the allegation or articles made by the party producing them but also

(1) 21. H. 8. cap. 6. (2) ' Audience ' Crt. Bk. 1570-74 F 165. (3) Harl. Miscell. Vol. II. ' The spiritual courts epitomised.'

upon interrogations or articles ministered by the adverse party and their depositions committed to writing ; afterwards the same are published and in case the proofs be sufficient the judge doth by his sentence or decree pronounce for the validity of the testament. ' (I)

If a will was proved in the absence of those persons who had interest in it, they might compel the executor of the will to prove it again in form of law. (2) (Causes for probate in solemn form frequently developed into contested suits. (3)

Before going any further it would be as well to dispose of the matter of fees for probate. These were a first charge on the estate and had to be paid whether the deceased died in debt or not. The Statute of Mortuaries provided that nothing was to be taken for the probate of goods under £5 except 6d to the scribe, a fee of 2/6d to the judge and I/- to the scribe was due for the probate of testaments whose value extended from £5 to £40 , while for the probate of goods valued at above £40 2/6d was due to the judge and 2/6d to the scribe, though he might take a penny for every line instead should he wish. The statute also made provision for a search being made for a will.

It was probably felt by the time of Elizabeth that these fees were too low, considering how the amount of goods which money could buy had decreased since the time of Henry VIII. A new schedule of fees for testamentary matters was decided upon for York in I57I, and it has been preserved by Conset.

(I) Swinburne 448, 449. (2) Idem 499. (3) See for example ' Office of the judge for the approbation of the testament of Thomas Dallariver.' Exchcq. Crt. Bk. I570-72. F 86.

This schedule of fees (I) may be regarded as the counterpart of the one set forth by Whitgift in the same year. (2) There seems to be some difference between them, the fees at York being lower, as was noted before.

It will have been seen that in the above quoted account of probate in common form the executor , in the person of his proctor, exhibited an inventory and took the oath to administer faithfully and to exhibit an account. By Canon I32 of the Canons of I604 this practice was abolished. In future every suitor for administration or execution was obliged to appear personally and to take his oath, although if he were ill a commission might be sent out for him.

EXECUTOR'S OATH AND BOND.

This part of the procedure displays another difference in the practice of the courts of the two provinces. Lindwood says that after a testament has been proved execution or administration is not to be committed except to persons who have faithfully promised to render a just account of their administration to the ordinary when they have been asked to do so. Swinburne on the other hand says - ' the executor before he be admitted by the ordinary to execute ' and before he have the will under the seal of the ordinary, ' (that is before probate, and not after probate, as in the case laid down by Lindwood) ' is to promise by virtue of his oath, to make a true account when he shall be thereunto lawfully called by his ordinary.'(3) Another difference

(I) Conset P. 4I5. (2) Ayliffe P. 55I. (3) Lindwood I77. Swinburne 45I.

lay in the fact that bond to make a true account was not always demanded from the executor in the southern province thought it might be asked for. (I) On the other hand ' in the province of York security was always given upon the granting of the probate of a will, without any dispute made upon it.' (2) And again ' in the province of York bond is and hath been always required and given, ' unlike Canterbury, where ' in the other province as far as the aforesaid constitution ' (the constitution of Archbishop Stratford , quoted at the head of this section) is in force they may require it if they shall see cause.' (3) In other words it was not usually asked for.

The executor's oath , as given by Burn , specified that the executor believed that the will was the last will of the deceased, that he would pay the debts and legacies of the deceased and that he would exhibit a true and just account into the registry of the ordinary when he should be lawfully called upon to do so. (4) This oath did not differ much from the oath taken at York , which was illustrated by the grant of probate. Forms of the obligations which the executors took will be given shortly.

COMMISSIONS TO PROVE WILLS.

Various persons, notably the rural deans were frequently given commissions to prove a will. Here is an example of such a commission as recorded in the court book.

(I) Lindwood. I77. (2) Opinion in the case of the King and Sir Richard Raines. Quoted in Burn P 62I. Vol. II. (L. Raym. 36I.) (3) Idem. (4) Burn Vol. II. 6I8.

' First of October, Year of Our Lord I574, a commission went out to John Postgate, cleric, dean of the deanery of Cleveland, York diocese, to prove the testament of John Garthe, cleric, formerly while he lived vicar of the parish church of Kirkleothome deceased. And afterwards on the twenty first day of April I575 the said John Postgate, cleric certified about the approbation of the testament of the said deceased which had been proved by Percival Hutchinson, John Hewgill and William Dickinson, witnesses named in the same testament, who had been sworn before him in form of law, and had committed the administration of the goods of the said deceased to Peter Makerege, the sole executor named in the same testament who had been sworn before him in form of law, saving anyone's right etc.' (I)

It is also recorded that an inventory was exhibited and a bond taken. Money was also received for the mortuary.

Numerous examples of commissions to prove a testament are given in the precedent books. Here is an early example from the Cambridge Precedent Book.

' Commission to prove a Testament.

The (Commissary of) the Lord Official to the Dean of N. Greetings. Whereas R. of T. has died, having made a testament , as is fitting, as we have heard we having full confidence in the Lord in your faithfulness and industry commit to you by the tenor of the presents our powers to obtain and admit in form of law that publication of the test-

(I) ' Chancery ' Crt. Bk. I575-79.

-ament and its probate and to commit administration of all and singular the goods which belonged to the said deceased, at the time of his death, being within our jurisdiction to so and so executors named in the same testament .... also to charge the said executors by their oaths , to be taken corporally on God's Holy Evangels, to make a faithful inventory of all the goods which belonged to the said deceased at the time of his death, to administer them faithfully , to pay faithfully the debts and legacies of the said deceased in so far as the means extend , and to render a faithful account about this their administration before the said Lord Official or us, when they have been asked to do this , as the legatine constitution published in this part asks and demands. And to do , exercise and expedite all and singular other matters which shall be necessary or opportune in this cause, on condition that you transmit the testament so proved before a certain day, closed and under your seal to us and that you distinctly and openly certify to the said Lord Official or us on the said day and place about what you have done in the premisses along with the names of those to whom this administration has been conceded in this part by your letters patent containing these things in order. Given at York etc. ' (I)

Here is a commission to prove a testament from the Bodleian Precedent Book.

' George Palmes etc. to our beloved in Christ Mr. A. B. Master of

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(I) Cam. Addit. M.S. 3115 F 82.

Arts , Dean of the Deanery of Doncaster and Mr. John Oliver, the Dean of the Deanery of Harthill and Hull. Greetings in the Lord. (We commit) to you jointly and separately our powers and full power in the Lord by the presents to receive admit and examine witnesses and other legitimate proofs of and about the making of the testament of the lady Elizabeth Saynel alias Gargrame formerly of Tankersley widow deceased , and when these witnesses have been sworn and diligently examined to approve and publish the testament if you find it rightly made. And to commit free administration of all and singular the goods which belonged to the said lady Elizabeth Saynell alias Gargrame deceased to the ladies Anne Thwaite and Elizabeth Conyers the daughters of the said lady Elizabeth and the executors namdd in the same testament (if they wish to accept the execution of the same testament on themselves) when they have been first sworn before you.

And should the said ladies Anne Thwaites and Elizabeth Conyers or either of them expressly and wholly refuse to undertake on themselves the execution of the testament and the administration of all the goods or should one of them refuse , cite them or the one so renouncing and refusing that they appear or she appear before us or our legitimate substitute in the aforesaid Exchequer at York on Teusday next after the feast of Epiphany of the Lord next coming after the date of the presents to say cause why we ought not to commit administration of these goods

according to the most salutary statute of this realm of England published in this part. And (we commit our powers etc.) to do exercise and expedite all and singular other things which shall be necessary or opportune in the premisses and concerning them, and we order you that you duly certify us or our legitimate substitute about all which you do and find in the presents on Tuesday after Hilary next coming after the date of the presents along with a true copy of the testament and a full true and whole and faithful indented inventory written on parchment to be made by you in this way of all the goods which belonged to the deceased at the time of her death, fully contained in itself. (plenarie in se continens.)

Given at York under the seal of the office aforesaid the twenty fourth day of December , year of Our Lord I54I.' (I)

A very similar commission is given by the Bodleian Precedent Book. It went out from Brian Higdon to a rural dean. (2) In this case as in the two commissions given above the person to whom the commission is addressed is ordered to prove one particular testament. This was not always the case as George Palmes , Commissary and Receiver General, issued a commission to the Dean of the Deanery of N. ' to receive admit and examine witnesses and other legitimate proofs on and about the making of the testament of C. D. formerly of S. deceased'as well as the testaments of several other persons whose names are apparently written on the back of the mandate. (3)

It occasionally happened that proofs of the making of the testament were lacking or the executors nominated in the testament refused to ad-

(I) Bucks. Archd. M.S. d. 4. F 28. (2) Idem F 60. (3) Idem F I.

ministrate. In this case special provision would be made in the commission. A commission from George Palmes to the Dean of the Deanery of N. orders the dean ' to receive, admit and examine witnesses and other legitimate proofs of and about the making of the testament of J.B. formerly of the parish of Myton deceased and when these witnesses have been rightly sworn and diligently examined if you find that testament to be rightly made to approve and publish it and to commit free administration of all the goods which belonged to the same deceased at the time of his death to the executor nominated in the same testament.... and if these witnesses and proofs are lacking or the executors named in the same testament wholly refuse to undertake on themselves the administration of the goods and the execution of this testament , to deprive them of this administration and the execution of this testament by your decree, * and to pronounce and declare that J. B. has died intestate . And if the said J. B. has died wholly intestate then to commit administration of these goods to the widow wife and sons and children or next of kin of the said deceased according to the statutes of the parliament of England published in this part, when there has first been received an oath from the administrator that he will well and faithfully administrate or that they will well and faithfully administrate the said goods and pay the debts according to the extent of the goods and debts , and will return a full, true and whole and faithful indented inventory.' (I)

The next commission to prove a testament raises another point of

(I) Bucks. Archd. M.S. d. 4. F 9.

* That is formally deprive them of the right to administrate.

procedure, that followed when the executors were of minor age. George Palmes, Commissary, commits his powers to Mr. T. W. vicar of N. ' to receive admit and examine witnesses and other legitimate proofs in and about the making of the testament of William S. lately deceased and when these witnesses have been sworn and diligently examined , if you find the testament rightly made to approve and publish it and to commit free administration of all the goods which are within the jurisdiction of the said most Reverend Father to Isabelle, widow of the said deceased and to the executors named in the same testament when they have first been sworn in form of law before us and to commit similar power of administration to John Fever and Helen Fever children of the said deceased executors named in the same testament , being of minor age, when they shall have come in form of law to receive it. ' (I) There is a note in the margin of the commission. ' Note for the approbation of a testament when the executors are of minor age.' (2)

In the commissions quoted above the Commissary has committed the complete probate of wills to some ecclesiastical person. This deputation of powers has probably been made because the places where the testators lived were too far off to admit of an easy journey to York to receive administration - Mytton for example is on the Lancashire border, or because for some other reason the executors found it difficult to travel to York , as in the case of Isabelle Fever who was a widow with two young children. Even in this case however the children were ex-

(I) Bucks. Archd. M.S. d. 4. F 2. (2) Idem.

-pected to appear in court sooner or later to claim their right to administer in form of law.

The right of probate was not always entirely delegated ; there are examples in the Bodleian Precedent Book where the recipient of the commission was only empowered to enquire about the circumstances of the making of the testament. A commission where the Commissary has reserved to himself the right of proving a will is given in John Martiall's Book. In it George Palmes orders Robert Collyne of Whitegift or Whitgift, the curate there to receive all the witnesses of the making of the will of Robert Jakeson formerly of Mawgerill Haull in Whitgift parish and diligently examine them. He is then to certify to the Exchequer what he has found and done in the premisses. The usual provision is added that this is to be done before some certain date, here ' before the Sunday next to the Invention of Holy Cross.' Moreover he is to cite John and Robert Jackson the executors named in the testament to appear and exhibit the testament and an inventory of the goods and to receive or l to renounce administration . (I)

Another form of commission which did not depute the whole duty of granting probate was a commission to take the oath of witnesses to a testament that it was an authentic one. Here is such a commission.

' George Palmes etc. Commissary and Receiver General to our beloved in Christ D. A. vicar of Burton. Greetings in the Lord. We commit to our powers and full power in the Lord by the presents to receive the

(I) Bucks. Archd. M.S. d. 4. F 48.

the oath of J. B. and J. R. witnesses nominated in the testament of William Molleson, formerly of Cherkwell of the parish of Batteley deceased of and about the making of the testament of the aforesaid William Molleson, that this testament is full , faithful and containing in itself his last will , and that they heard the same testament declared to be so by the testator being of sound mind.

And duly certify to us or our legitimate substitute what you have done in the premisses before the twenty fourth day of July by your letters patent or by your word of mouth. Given at York under the seal of our aforesaid Office , the last day of June Year of Our Lord I54I.' (I)

A rather similar kind of commission was the one which issued from the Commissary empowering some deputy to take an oath from an executor that he would fulfill the conditions of the testament. Here is an example.

' Commission to (receive the oath) of an executor that he will fulfill the legacies and pay the debts. *

George Palmes etc. to our beloved in Christ D. R. chaplain . Greetings in the Lord. We commit to you our powers and full power in the Lord by the presents to receive the oath of Alice, widow of John Jackson of Holme in Spaldingmore deceased and John son of the said John , executor named in the testament of the aforesaid John Jackeson along with Robert his son ... to fulffill the legacies in the testament of the aforesaid deceased and pay his debts and further to do what has to be done in this part.

(I) Bucks. Archd. M.S. d. 4. F 20. * here as elsewhere the margin, which contains many of the titles of the documents, has apparently been chewed by mice .

And duly certify etc. what you do in the premisses. And in the case of the aforesaid executors refusing to undertake the execution of the testament on themselves, then deprive them of the administration of the goods and the execution of the testament. Given at York etc.' (I)

FORMS OF PROBATES.

The Cambridge Precedent Book gives numerous examples of forms for probates. These were the documents annexed to the copy of the will which was handed to the executor. In later times the name came to be applied to the will itself.

Here is what the scribe seems to have intended to set down as the normal form of a probate as it was put first in the precedent book and without any qualifying addition to the title.

' Form of the probate of a testament.

W. of C. to the venerable man etc. In the name of God, Amen. The proofs about the making of the testament annexed to the presents having been admitted before us the Commissary General of the Lord Official of the Court of York we pronounce this testament rightly made and legitimately proved and concede administration of all the goods of T. M. deceased being within the jurisdiction , to J. P. executor named in the same testament in the form of the legatine constitution... in testimony of which thing the seal of our office has been attached to the presents. Given etc. ' (2)

(I) Bucks. Archd. M.S. d. 4. F 103. (2) Cam. Addit. M. S. . . 3115. F 84.

Here is the probate of a verbal or nuncupative testament. This was made by the testator declaring his testamentary intentions to witnesses who afterwards appeared and proved the will.

' Probate of a nuncupative testament.

In the name of God amen. The proofs about the making of the nuncupative testament of J. of N. of O. * having been admitted before us the commissary of the Lord Official of the Court of York we have pronounced that he made his nuncupative testament as follows.

' I, T. M. commend my soul to Almighty God and the blessed Virgin and all saints and my body to be buried in my parish church. And I wish that my debts be paid and when they are paydd and my funeral expenses deducted I give and leave the residue of all my goods which I have or belong to me to J. my wife , and I constitute her my executor.'

We pronounce this testament to be rightly made and legitimately proved and freely concede free administration of all the goods of the said deceased being within our jurisdiction to J. the wife of the said deceased and the executor named in the same testament, freely conceding free administration of all the goods of the said deceased being within our jurisdiction in the form of the statute published concerning this. Given at York.' (I)

A different form of probate also given in the Cambridge Precedent Book, is the ' probate of a testament with dismissal.' (2) In this case apparently the executors have settled their accounts with the ordinary

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(I) Cam. Addit. M.S. 3II5 F 85. (2) Idem F 85. * Here as elsewhere this seems to be a Norman name with an English territorial attachment - ' Sir Roger de Coverly of Shropshire.'

as the probate announces that the proofs of the making of the testament annexed to the probate have been admitted and that the testament is pronounced as rightly made and administration freely conceded and that the ordinary has dismissed the executors from any further rendering of an account in so far as touches his office ' saving anyone's right.'

Elizabethan probates do not vary very much from the forms given above . Here is an example from the Bodleian Precdent Book.

' In God's name amen. The proofs about the making of the testament annexed to these presents having been admitted in the presence of us, George Palmes, doctor of laws, canon of the metropolitical church of York and Commissary and Receiver General of the Exchequer of the most Reverend Father in Christ and Lord the Lord Edward by divine permission Archbishop of York and Primate of England and metropolitan , supported by the authority of our Lord King the supreme head of the church, we pronounce and publish this testament as rightly made and legitimately proved and the administration of all the goods belonging to the deceased at the time of his death, being within the jurisdiction of the most Reverend Father are to be committed to the executor named in this testament who was formerly sworn before us.

Given at York under the seal of our aforesaid office, on the first of March in the Year of Our Lord etc. ' (I)

If a testator left bona notabilia in both provinces the testament had to be proved in both and had to have two probates , one before each

(I) Bucks. Archd. M.S. d. 4. F. I.

archbishop. An example of an ' Approbation of a testament before the Archbishop of Canterbury by reason of the prerogative ' is given in the Bodleian precedent book, but it seems doubtful whether a previous probate was obtained from York in this case .

Wills which left goods in two jurisdictions also required two probates . An example is the ' Approbation of a testament ' in the Cambridge Precedent Book. The approbation mentions that the testament has already been proved before the Commissary of the Official of the Court of York and that d administration is now committed in the form of the legatine constitution of the goods within the jurisdiction of the Dean and C Chapter in as much as it pertains to them. (I) The same principle is embodied in the ' Approbation of a testament with a codicil ' which is given by the Chapter of York . It is a probate of the testament of the late Dean. The testament and codicil have been already proved before M. J. E. bachelor of laws and Commissary of the Archbishop of Canterbury ; the Chapter now grant probate on their own account and commit free administration of all the goods of the deceased which are within their jurisdiction to the executors nominated in the testament. (2)

Another form of a similar sort is the ' Confirmation and ratification of a testament formerly proved before the Commissary of a peculiar jurisdittion.' (3) In it John Rokebie, Doctor of Laws and Commissary of the Exchequer and Receiver General of the Archbishop pronounces for the validity of a testament formerly proved before Mr. Thomas Ketland,

(I) Cam. Addit. 3115 F 85. (2) Idem F 103. (3) Bucks. Archd. M.S. d. 4. F. 95.

Commissary of the peculiar jurisdiction of Popleton and Myton ' formerly of the monastery of the blessed virgin Mary near to and outside the walls of the city of York.' Administration is committed to the executor named in the testament, saving anyone's right, and the right of committing a similar power of administration to the daughter of the deceased when she comes to full age.

REFUSAL OF AN EXECUTION.

The duties of an executor in Elizabethan Yorkshire must have been arduous, unpleasant and occasionally even ruinous to himself. Accounts of a sort were kept but the estates of people of high position were often in a state of indescribable confusion. This was particularly true of the clergy. John Thornborough , the Dean of York, who ought by rights to have been a rich man, wrote to Burghley in the following terms. ' Now but yesternight after I came from yr. Lordship I received a letter from my deare and naturall brother that he is enforced to hide himselfe and is gone aside for a time from the knowledge of his e wife, friends and children.' (I) Apparently he had been unwise enough to stand surety for Thornborough.

Executors were often out of pocket, and if they were wise would pay the deficiencies themselves rather than face an angry legatee. (2) Even if the estate covered all debts and legacies and paid the considerable expenses of an executor, there was usually some dissapointed relative who was prepared to sue him.

(I) B. M. M.S. S. Room Lansdowne 75 No. I6. (2) There are numerous examples of executors doing this . See for example Bucks. F 56.

It is no wonder that some executors delayed and others absolutely refused to undertake execution. In one cause the judge ordered William Rydinges the executor of the testament of a certain Margaret Rydinges to appear and exhibit her testament. As he delayed was summoned and did not appear the judge excommunicated him. Thomas Bacon, his co-executor appeared and proved the testament and Rydinges later appeared as well and was absolved , whereupon he took a corporal oath along with Bacon to fulfill the testament and they were granted execution. (I)

Here is a citation calling on an executrix who has delayed execution to prove a testament and take a bond for the security of a filial portion bequeathed by it.

' Citation to cite the executors to prove a testament and to give a bond for the security of a filial portion.

George Palmes, Commissary and Receiver General to the curate of W. Greetings in the Lord. We order you that you cite or have cited peremptorily E. T. your parishioner executrix (named) in the testament of J. T. her deceased husband that she appears before us or our legitimate substitute in the aforesaid Exchequer of York on the aforesaid Monday next coming after the date of the presents to exhibit and show there and then before us the testament of her aforesaid deceased husband and accept and undertake on herself the burden of the administration of the goods and execution of this testament or else to completely renounce and refuse it,

(I) Exchequer Crt. Bk. 1570-72. F 116.

and also to find sufficient and suitable bond for the security of the payment of the filial portion of the said deceased, then and there in the Exchequer . And concerning the mere probate of the testament and administration of the goods of the said J. D. and his widow at the promotion of W. J. of E. gentleman to be objected to her and to be sworn by everything to obey. etc. ' (I)

A special form of probate is given by the Cambridge Precedent Book for use in this case called ' Form of the probate of a testament when the executors nominated refuse to admit administration.' (2) In it the Commissary of the Official pronounces that the testament has been rightly made and that since the executors named in the testament have refused to undertake administration executors will be deputed ' ex officio' and that they are to make a true inventory of the goods of the deceased by virtue of their oath pay his debts and indemnify the Archbishop for any uses they may make of the administration . More will be said of this indemnification later.

If a person nominated as executor in the testament refused the office he could not be compelled to undertake it unless he had first meddled with the goods of the testator. (3) In that case he became executor [illegible] ' administring of his own wrong.' (4) That is though he could be sued as executor by the creditors of the testator and could at any time be compelled to undergo the duties of an executor. (5) If therefore anyone were nominated as executor but refused to undertake

(I) Bucks. Archd. M.S. d. 4. F 30. (2) Cam. M.S. Addit. 3II5 F I04.
(3) Swinburne 384. (4) Idem 469. (5) Idem.

the duty he would have to be particularly careful not to kill any of the deceased's cattle or sell his goods though he could feed the cattle and put the goods under lock and key, as, says Swinburne these are not the actions of an executor but of a Christian. (I) If he had refused to undertake execution and had changed his mind the judge might still admit him. (2)

If an executor had definitely decided that he did not wish to undertake execution he had to appear in court and say so as in the example of a probate given above for ' the refusal to take upon him the executorship cannot be by word only but it must be entered and recorded in court.'(3)

CITATIONS TO THE EXECUTOR.

Even after probate had been given an executor was liable to be cited by his ordinary to make him perform or hasten the performance of his duties .

The Cambridge Precedent Book for instance gives the form of a ' Citation to the Executor to show charters and muniments.' (4) In it the Official orders a rural dean to cite the executor of a testament before him (the Official) in the Exchequer to exhibit a charter of enfeoffment of a certain tenement in the town of F. and to answer to certain articles concerning his mere soul's health.

Otherk kinds of citations to an executor concern the handing in of an account. An example is the ' Citation to an executor to give a final account.' (5) It issued from the Official to some ecclesiastical

(I) Swinburne 472. (2) Idem 443. (3)Idem. (4) Cam. M.S. Addit. 3II5. F 92.
(5) Idem F 5I.

officer who was ordered to cite an executor and have him render a final account and if need be take an oath upon it. An executor might appear to receive execution in due form and take his oath as executor and yet not fulfill the wishes of the testator,. One of the citations in the Bodleian Precedent Book went out to an executor who had not fulfilled the wishes of the testator in this way. By it the ordinary cited the curate of the parish churches of Almyngton and Bubwith and ' all and singular rectors etc. wherever constituted throughout the diocese of York ' and ordered them to cite peremptorily Elizabeth and Alice Thompson, daughters and executrixes of the testament of Isabelle Thomson ' that they appear or one of them appears before us or our substitute in the Exchequer of York on the aforesaid day of March next after the date of these presents to say and allege reasonable and legitimate cause if they have any or can say any why we ought not to excommunicate them and any of them and publicly declare and denounce them as excommunicate in form of law because of the infringement of their oaths in not fulfilling and satisfying the debts and legacies ofcontained in the testament of the deceased and in her inventory.' (I)

ACCOUNTS AND ACQUITTANCES.

The executor's account was supposed to account for the paying out of the legacies and debts of the deceased and also for any other charges, such as funeral expenses and the executor's charges. On rendering his

(I) Bucks. Archd. M.S. d. 4. F 16.

account he received an acquittance from the ordinary which acknowledged receipt and dismissed the executor from rendering any further account. Here is an early example of such an acquittance from the Cambridge Precedent Book.

' Know all men that the account of the executors of the testament or last will of R. C. chaplain deceased having been heard before us the Commissary of the Lord Official of the Court of York, whereas we have found those executors to have well and faithfully administered in the goods of the aforesaid deceased we have dismissed those executors from further troubling by our office, saving anyone's right and we do dismiss them saving anyone's right , by the presents. Sealed with out seal. Given etc. ' (I)

Another version is given by the same precedent book.

' Know all men etc. that we the Commissary General of the Lord Official of the Court of York, having heard the account of the executors of the testament of J. of F. deceased about their administration made in the goods of this deceased we have found those executors to have well and faithfully administered and to have rendered a legitimate account in all things therefore we absolve and absolutely dismiss these executors from the task of rendering any further account about the premisses , saving anyone's right and we dismiss them absolutely by the presents to which we have attached the seal of our office. Given etc. ' (2)

(I) Cam. M.S. Addit. 3II5 F II6. (2) Idem

A third form given by the same precedent book , the ' acquittance upon the administration of the goods of a deceased person ' (I) does not differ greatly from the forms given above except that it mentions that the accountants have ' accounted for what ought to be accounted for and allowed for what had to be allowed for.'

ADMINISTRATION OF AN INTESTATE'S ESTATE.

There were two kinds of persons who were regarded as being intestate, those who died without leaving a will and those who made a will and nominated executors who afterwards refused to undertake execution. Conset gives a good definition of administration in the following words.

' Administration ' signifies ' the management of the affairs of any one deceased by a special power derived from the ordinary of the place.. this power so derived from the ordinary are the letters of administration which are either simply such, where a will being made but the executor either not named or else is dead ... in which case the will is proved as before and letters of administration annexed to the will with the ordinary probate (which is the judge's approbation of the said will, pronouncing for the validity thereof) and this is called an administration with the will annext.' (2)

The ordinary had formerly had complete power over the goods of intestate persons. He could keep the complete estate if he wished and allow nothing to the widow , children or creditors. Various statutes

(I) Cam. Addit. M.S. F II5. (2) Conset Part I. Chap. 3. Sect. 3.

gradually abridged this power. The statute of I3 Ed. I. st. I. c. I9. in particular laid down that the ordinary was bound to pay the debts of the deceased so far as the goods extended , as an executor would have been bound to do, had a testament been left. By the statute of 3I Ed. 3. st. I. c. II the ordinary was obliged to depute the administration of the goods to the ' next and most lawful friends of the deceased.'

The statute of 2I. H. 8. c. 5. laid down that if anyone died intestate or became intestate by the executors named in the testament refusing to administer the ordinary was to commit administration to the widow or next of kin, or both of them. If several relatives claimed the administration the ordinary might choose one or more of them. The ordinary could be compelled to grant administration (I) but no one was required to undertake it. (2)

The administrator on his taking out letters of administration took and oath , here is the form given by Conset.

' You shall swear that you believe the deceased dyed without making any will and that you will faithfully administer all his goods etc. and pay all his debts so far as the goods will extend and the law shall bind you, and that you will make a true and perfect inventory of all and singular the goods etc. of the deceased and likewise a true and just accompt of the same according to the purport or intent of the Bond by you to be en-

(I) Burn's Ecclesiastical Law Vol. II. P. 653. (2) Swinburne 384.

-red for your administring the said goods etc. ' (I)

If executors refused to take execution the same procedure was followed as if the deceased had died intestate, the ordinary took bond that the administration should be duely carried out and committed administration. (2)

The fees laid down for letters of administration by the statute 21 H. 8. c. 5 were , for goods below £5 , nothing to be paid, for goods between £5 and £40 , 2/6d. Nothing was said about the fee for administration of goods above £40 and one enterprising ordinary took 10/- (3)

Here is an illustration of the granting of an administration from the court books.

' On the same day the administration of all and singular the goods, rights and credits and portion which belonged to Barbara Hesselwood, formerly of Kingston on Hull, infant deceased were committed to Elizabeth Hemesley, alias Hesselwood, the mother of the said deceased, to the use, commodity and benefit of Richard Hesselwood, the natural and legitmate brother of the said deceased, being of minor age during etc. (i.e. during his minority) and not otherwise, saving anyone's right and with the power of committing a similar administration to the said Richard when he should have come etc. (i.e. when he should have come of age) and (the mortuary) having been paid, John Hortoastell and Walter Hall took bond and exhibited an inventory.' (4)

In this case a filial portion was owing and would be paid to Richard Hesselwood. Procedure therefore was the a same as if Richard

(I) Conset Part I. Chap. 3. (2) 21. H. 8. c. 5. (3) Burn's Ecclesiastical Law. Vol. II. P. 640. (4) Exchequ. 1570-72 F 33.

was an orphan. ' If the deceased ' says Conset , ' leaves children in minority then the next of kindred take the administration o to the use of those children and gives a good security to the court for their portion.' (I) Here the portion of Elizabeth passed to her brother.

If there were some doubt as to his right to administer the prospective administrator might bring a cause for the commission of the administration to him. Here is an example of a heading from such a cause.

' Office of the judge for the commission of the administration of the goods rights and credits which belonged to John Marshall formerly of Doncaster York diocese who has died intestate as is asserted against Elizabeth widow of the said deceased in particular and all others (in general) etc. ' (2) The cause might be brought in this fashion or against ' all the next of kin.' The proceeding in this case was as follows.

' On the act of appearance. On which day hours and place the citation having been introduced with the certificate on the back of it, and all and singular the next of kin of the said deceased having been summoned there appeared personally the said Elizabeth Marshall wife of the deceasdd and accused thecon contumacy of all and singular the next of kin of the said deceased and petitioned that they be reputed contumacious and she petitioned that in penalty of their contumacy administration of the goods of the said deceased be committed to her in form of law. And then the

(I) Conset Part I. Chap. III Sect. 3. (2) Exchequer Crt. Bk. I570-72 F 9.

judge decreed that administration of all and singular the goods rights and credits which belonged to the said deceased at the time of his death be committed to the same Elizabeth, widow of the said deceased, according to law, to whom the judge so committed it etc. when they had sworn and corporally touched etc. (the Evangels.) And she exhibited an inventory of I5 pages . ,, And the said widow and the others took an obligation.' (I)

LETTERS OF ADMINISTRATION.

Here is an example of letters of administration .

' George (Palmes) etc. To our beloved in Christ Anne Haull widow of John Hall. Greetings in the Lord . We commit to you, in whose faithfulness, prudence and industry we fully confide the administration of all the goods which belonged to John Hall of C. , York diocese, who has died intestate and we appoint ordain and depute you administrator in and of these goods by the presents, ordering you by virtue of your oath taken before us in this behalf that you will make a full whole and faithful inventory of all the goods which belonged to the deceased at the time of his death and which he effectively held and that you will well and faithfully pay if and so far as the goods extend to it, a legitimate division having been made if need be and that you will indemnify the aforesaid most Reverend Father in Christ and us and his officers and ministers for any uses made by you by reason of your administration.

(I) Exchequ. Crt. Bk. I570-72 F 9.

And further that you will do what has to be done in this part so that you return f a faithful account or reckoning of your administration to us in the said Exchequer at York before the feast of all souls, when you have been properly asked to do this. Given at York under the seal of our aforesaid office.' (I)

More will be said about the ' division ', ' defalcacio ' or proportionate paying out of the goods of the deceased later. It is sufficient to say here that it consisted of what we should call paying so much in the pound, when the deceased left greater debts than could be paid from his goods.

The indemnification of the office for ususs made by reason of a grant of letters of administration was of course, essential as a nearer claimant might appear , prove his right, and then sue the Commissary for the uses made by reason of the administration. Examples of bonds taken to indemnify the office will be given later. Not all grants of administration were made in court sometimes the parties concerned lived at a considerable distance from York or were otherwise unable to attend court. Accordingly commissions were issued empowering ecclesiastical officials and rectors to give grants of administration. Here is an example.

' Commission to commit administration of the goods of a person who has died intestate.' (2) It issued from the Archbishop of York to the Commissary of the Court of York. The beginning of the commission rehearses

(I) Bucks. Archd. M.S. d. 4. F 5. (2) Cam. Addit. M.S. 3II5 F 83.

that the disposal of all the goods which belonged to intestate persons d dying within his jurisdiction belong to him and wishing to make provision accordingly he commits his powers to the Commissary to commit administration of the goods of J. of S. of York who lately died intestate to his widow who is to make an inventory of all his goods pay the debts of the deceased so far as the goods extend and return a faithful account of the administration when properly asked to so so, also to do and expedite all necessary or opportune things. (I)

Another commission to grant administration, this time to the executor of a testament , runs as follows.

' George etc. Commissary and Receiver General to our beloved in Christ A. R. rector of Hewthorne. Greetings in the Lord. (We commission you) to commit administration of all the goods which belonged to Nicholas Tod of Hotham deceased to Agnes his widow and executrix named in the testament . Also to receive the oath of the aforesaid Agnes that she will make and exhibit to us a full true whole faithful and indented inventory written on parchment of all the goods which belonged to this deceased at the time of his death and will well and faithfully pay the debts and legacies of the said deceased and will indemnify the aforesaid most Reverend Father in Christ and us and his officials and ministers whomsoever for any uses made by reason of the commission of this administration and will do what has to be done in this part, in such a way however, that she renders a faithful account or reckoning of her administration

(I) Cam. Addit. M. S. 3II5 F 83.

in this way in the said Exchequer at York when she has been duly asked to do so etc. And duly certify what you have done in the premisses to us before Monday next Given at York under the seal of our aforesaid office. etc.' (I)

DUTIES OF AN ADMINISTRATOR.

At the time an administration or probate was granted the executor or administrator had to produce an inventory of the goods and chattels of the deceased and at the same time he took an oath that he would exhibit a further inventory if he was required to do it. (2) The making of an inventory was enjoined tby the constitution of Othobon (' the executors of testaments before they shall intermeddle with the administration of the goods shall make an inventory in the presence of some credible persons, who shall competently understand the value of the deceased's goods ; and the same shall exhibit unto the ordinary , and if any shall presume to administer, without such inventory made, he shall be punished by the discretion of the ordinary. ' (3)

By the statute of 2I. H. 8. c. 5. persons to whom administration had been committed when the deceased had died intestate (' or by way of intestate ') should take two of the persons to whom the deceased was indebted or two of the legatees and if such persons refused, the ' two other honest persons, being next of kin to the person so dying, and in their default and absence two other honest persons ' in whose presence

(I) Bucks. Archd. M. S. d. 4. F 6. (2) Swinburne 228. (3) Athon I76, quoted by Burn.

and with whose help they should make an inventory of all the deceased's goods, and ' the same shall cause to be indented, whereof the one part shall be by the said executor or ex administrator or administrators, upon his or their oath or oaths to be taken before the said bishops or ordinaries , their officials or commissaries or other persons having power to take probate of testaments to be good and true delivered into the keeping of the said bishop ordinary or other person as aforesaid, and the other part thereof to remaind with the said executor or executors, administrator or administrators. '

The inventory included all goods cattle , household stuff, money credits corn and all moveables , everything in fact which was not part of a freehold. (I)

There was a York custom relating to inventories. ' Such hath ever been the general and ancient custom or rather courtesy of the province of York as thereby widows have been tolerated to reserve to their own use not only their apparel and a convenient bed but a coffer with divers things therein necessary for their own persons ; which things have been usually omitted out of their deceased husband's goods.' (2)

The inventory had to be delivered to the ordinary at a time to be appointed by him. (3) Executors might recover goods in the common law courts, (4) as administrators could. ( ) Most of the law concerning executors regulated the actions of administrators as well, as their office was virtually the same.

(I) Burn Vol. II. P. 645. (2) Swinburne 428. (3) Lindwood I77. (4) By the Act. I3 Ed. I. st. I. c. 23. executors could have a writ of account to recover goods . By 4 Ed. 3. c. 7. they could have a writ of trespass. Similar power was given to administrators by 3I Ed. 3. st. I. c. II. (Burn. P. 654.)

OBLIGATIONS.

Something must now be said about the obligations or bonds which the administrators took to indemnify the Office for their uses made by reason of the administration granted to them.. Here is a typical example.

' Condition of an obligation for letters of administration. The condition of this obligation is such that if the above obliged A.B. C. D. E. F. indemnify the aforesaid most reverend father in Christ and George Palmes, Commissary of the aforesaid and the officers and ministers of the said most reverend Father whomsoever for any uses whatsoever (made) by reason of the commission of the administration of the goods which lately belonged to Thomas Hembrughe formerly of Drax aforesaid who had died intestate made and conceded to the aforesaid Joan Hembrughe his widow and also that she shall make a full whole true and faithful indented inventory written on parchment of all the goods which belonged to this deceased at the time of his death and exhibit it to the aforenamed George Palmes o in the Exchequer at York and well and faithfully pay the debts of this deceased, also render a faithful account or reckoning of this her administration to the aforesaid George Palmes, when she has been duely asked to do this, without any deceit or fraud. ' (I)

If the administration was granted for the use of a minor as in the case cited above in the case of Barbara Hesselwood ,(2) the administrators would be required to take a bond for the security of such part of

(I) Bucks. Archd. M. S. d. 4. F. 6. (2) P. 381.

the administered estate , which was often a portion, which should pass to the minor. Here is an example of such an obligation.

' Condicion of this obligacion is such that if the above bounden John Jakson Robert Abbot, William Fletcher, Richard Hodgeson, William Browne salve (save) and kepe harmles tha above named most Reverente father and George Palmes his commissarie of thexchecor at Yorke and all other the said most reverend fathers, officers and mynisters emenst * all men by reason of committinge thadministracion of the goodes which we were lat Robert Jakeson's deceased into the above naymed J. B. as tutor or curator of Richard Jackson the basterdson of the said Robert Jackson deceased and the executore naymed in the testament of the said Robert d duringe the none aidge of the said Richard Jackeson lawfully deputed and also maike a trew and faithfull accompte of all and singler goods cattels detts and somes of meney which were the said Roberte Jackeson's they tyme of his deceased unto the said George Palmes Commissarie afersaid in the exchecor in Yorke or to his certayne depute at suche tyme as the said Richard Jackeson executor aforesaid shall come unto leful aidge and able to taike execution of the said testament without any further delay that then this obligacion to be void and of none effect or els to stand and be in his full strength and wertew . ' (I)

A very similar obligation to the above is given also by the Bodleian Precedent Book . It is entitled.

(I) Bucks. Archd. M.S. d. 4. F I6. * i.e. anent, against.

' Condition of an obligation for a letter of administration by reason of the assignation of a tutor.' In it N. P. Thomas Heweson, John Consett, and William Pride indemnify the Archbishop and the Commissary of the Exchequer and any other ministers whomsoever for any uses ' by reason of the commission of administration of the goods which belonged to Thomas Prestman formedly of Levesham deceased to Henry Prestman and Agnes Elizabeth and Mabel Prestman, infant children of the said deceased. ' (I)

RENUNCIATION.

It would be as well to notice renunciation of administration and instruments of renunciation here. Most of the reasons which tended to make people hang back from executing a testament inclined them to be wary of acting as administrators, as both classes of officers might be sued for money owed by the deceased, or for failure to pay out the assets of the estate in a satisfactory manner. A typical instance of the danger of an administrator is the lawsuit in the Arches which followed on the death of Archbishop John Piers or Peers of York . This prelate is described by Browne Willis who is not kind to the other Archbishops as ' this primitive bishop ' and he had says Willis ' little to bestow at his death.' (2)

Even that little was too much however as Piers had in this primitive fashion been milking the Archiepiscopal See to a quite remarkable extent, even for an Elizabethan Archbishop of York. Nor did he even have the

(I) Bucks. Archd. M. S. d. 4. F 16. (2) Browne Willis ' Survey of the Cathedrals.' 1742.

excuse that Professor Rowse puts forward , or rather implies on behalf of Sandes , that he was stealing the money not for himself, but for his children, as he was a single man. That large monument of Sandes' in Southwell Church, with the long file of children in the bottom panel by the way , ought to be venerated by Americans as one of their national shrines, for the consequences of those children, the deserted churches, the parsons and readers amissing, and the neglected faithful produced the main-spring of the Pilgrim Fathers , the Yorkshire element, headed by William Brewster. The fact of Piers' peculation transpired through the discovery in the Public Records Office , among the Delegates' records, of the sentence by which that court pronounced for Matthew Hutton, Piers' successor , in a suit against his administrators, John Bennet and Thomas Painter. (I) Piers had made away with no less than £ 1,610 during the five years and six months which constituted almost the whole of his reign ; the unfortunate administrators would of course have to find some of this vast amount, and if , as Willis suggests Piers had little to leave , so much the worse for them.

There were of course other considerations which might induce a person to renounce administration, the trouble it involved being one of them.

The instrument of renunciation to be given as an example is one from the Bodleian Precedent Book. (2) It was drawn up on the 13th of

(I) P. R. O. Del. 5/2. 84. (2) Bucks. Archd. M. S. d. 4. F 83.

August I539 in the house ' vulgarly called ' The Thesaurie.'' within the precincts of the metropolitan church of York. The Ordinayy was the Treasurer. A notary public was present and subscribed it, while the witnesses present attached their names. It relates that Mr. John Brandesbie, S.T. P., and canon of the said church (York Minster) and prebendary of the prebedn of Osbaldwicek appeared before Mr. William Cliff Doctor of Laws Treasurer and Vicar General and Official of the Archbishop and asserted that a certain Peter Brandesbie, merchant of London who was his natural brother had died completely intestate. He took on himself the task of administration of the goods of the said Peter , as next of kin according to the Act of Parliament published in this behalf and in the mind and with the intention that a certain William Sanderson of the city of London , cousin of the said Peter , should take administration through his ordinary, expressly renounced administration and passed and transferred his whole right title and interest whatsoever acquired by reason of this closest degree of consanguinity to the same William Sanderson in the way expressdd above. He petitioned that the said Mr. William Clif, the judge should admit his refusal or renunciation in thw way expressed and not otherwise nor in any other way. He asked moreover that a public instrument or instruments should be made upon this renunciation. Mr. Uldred Johnson, priest , parson in the metropolitical church of York and Thomas Stevenson, literate person, were present ' as witnesses respectively for the dioceses of York and Durham' (in both of which the deceased had presumably left

property,) and they had been called and asked to hear and testify.

William Fawks, notary public had a public instrument drawn up by some other notary which he signed and subscribed himself , witnessing that the facts contained in the foregoing document along with the names of the people concerned the renunciation, and everything else contained in it had taken place as stated in the document , and Fawks himself put his seal to it.

ASSIGNMENT OF ADMINISTRATION TO NEXT OF KIN.

Hitherto the administrations described have been granted to a widow, executor or curator. In some cases however the deceased did not leave any widow or obvious (next of kin. The procedure then followed was described by Conset in this way.

' If there is no widdow or relict of the deceased (to whom the administration of the goods of the intestate ought to belong of course) then the nearest of Kindred coming to obtain letters of administration must first have a citation (against all and singular next of kindred to the deceased to come (at a certain day named in the citation) and appear before the judge and shew cause if they can why administration of the intestates goods may not be granted to the party, at whose instance the citation is obtained ; and this citation is to be published in the parish church where the deceased inhabited (whilst he lived) a sunday or two before the day (of appearance ; if none appear to shew reasons (to the contrary or that some more of equal degree or interest (with the

party who took out their public citation) do appear then the administration is granted to them equally.' (I)

At York this citation took the form of a proclamation, of which there are several examples in the Bodleain Precedent Book. Here is an example.

' Proclamation for the next of kin to receive administration of the goods and payment of the debts according to the extent amount and share of the goods.

John Rokebie , doctor of laws, etc. Commissary and Receiver General to our beloved in Christ the Dean of the Deanery of Holdernes. Greetings in the Lord. Warn legitimately and effectively make known to the next of kin to William Leadladie formerly of R. who has died intestate if there are any who wish to take upon themselves the administration of the goods of the said deceased and payment of the debts of the said deceased according to the means extend and share of these goods that they appear before us or our legitimate substitute in the Exchequer at York on Thursday n after the Feast of the Nativity of St. John the Baptist next coming after the date of the presents to take up administration of the goods of the said William Leadladie deceased on themselves and at the same time offer and exhibit a sufficient bond for the indemnity of the said most reverend father and us, and the officers of the said most reverend father and further to do and receive what justice shall advise in this part , intimating to them , the next of kin , that that day, which is

(I) Conset Part. I. Chap. 3.

to say Teusday the twenty fifth day of June next coming having passed and none of the kin of the said deceased having appeared and (offerred) to take administration of these goods on themselves and found and exhibited a sufficient security for the payment of the debts of the said deceased before us we intend ton concede administration of the said goods, notwithstanding the absence of rather contumacy of these kin in any way.

And duly certify what you have done in the premisses and how this our present mandate was executed to us or our legitimate substitute on the said day , Teusday and the place, by your letters patent or your word of mouth. Given at York under the seal of our aforesaid office. The I5th day of May, Year of Our Lord I545.' (I)

Another proclamation to the next of kin is given by the same precedent book. In this case the widow has refused to take administration on herself.

' A proclamation for the nexte of kyne for to taike administracion accordinge to thacte of parliamente.

Thomas Marsare bacheler in lawe, chanone and Residenciarie of the Metropolitaine churche of Yorke and Commissarie and General Receyver of the exchecoure of the chapitoure of the metropolitaine d churche of Yorke, the deane thereof being in the kinges affaires beyond the see and the see of the same bëing voide lawfully deputed by the most excellent prince Henry the eighte by the grace of God King of Englande, France and Irelande, defender of the faithe and in earthe of the churche of England and also

(I) Bucks. Archd. M. S. d. 4. F 67.

of Irelande the supreme head.

To our welbeloved in Christe the curates of the blissed Trenities and of our blessed ladie in Hull sendeth greetinge in our lorde God everlastinge. And for as much as Christopher Blande, laite of the said town merchaunte deceased is in greate debts to diverse persons and sundrie persons as we be credably informed fare above th'extents of all his godes cattals , wares and marchaundice that he hade at the tyme of his deathe. And that Jane Blande his wife judicially before us expresely haithe renounced administration of his said goods, cattals, waires and marchaundice. Wherefore we woll and commaunde youe by reason whereof the said goodes as yet lieth unadministered that ye publishe and declare openly in yow said churches when most presence of people shall congregate therein sondaies and holidaies that if there be any of kine or of consanguyntie to the said Christofer Blande that woll take upon them the administracion of the said goods, cattals, waires and merchaundice and finde sufficiente surtie before us ferto bringe in a true Inventarie into thexchecor at Yorke , indented , at a certain daie by us to them to be assigned and for to minister the saide goodes catals, wares and marchaundice towardes the satisfaccion and payment of his creditores accordinge to the extent of the saide goodes that they come in before us with sufficient suertie open Weddinsdaie nexte after the feast of sancte Hilarie next for to come and they shall have thadministracion of the premisees graunted unto them accordinge to thactes of parliament therin provided.

And in defalte of his said kyne and consanguynitie then it shalbe lawfull for one or moo creditors makinge requeste unto us for the said administracion then ; and in case it shalbe lawfull for any other honest person makikinge requeste for thadministracion of the premisses that ye dulye certify us by your lettres patent the said day and plaice, further commaundinge that ye permitte the said goods under sequestracion and custodie unto such tyme as thadministracion of the said goods shalbe committed to suche persons as is above naymed for to answere the said creditors. And if ye fynde that any doo violett or breke the said sequestracion that ye cite and monishe them to appere before us the saide day and plaice for to shewe a cause reasonable then and ther whie we shall not declare them excommunicate for brekinge and violatinge the said sdquestracion ; yeven under the seale of our office the xxii day of Decembre in the yere of our lorde God a thousand fyve hundreth, forty and fowerre.' (I)

ADMINISTRATION BY CREDITORS.

The proclamation quoted above brings up the subject of administration by creditors. Here is what Conset has to say about it.

' If the deceased died in debt, the principal creditor or any of the creditors may use the like proceedings ' (that is , can claim administration as the next of kin may) ' This practice so long used (in the Courts of his Grace the Lord Archbishop of York especially) pleads its own reasons and necessity, so that no reasons need be shown for it.' (2)

In this connection it is interesting to note a ' Monition or pro-

(I) Bucks. Archd. M. S. d. 4. F 48. (2) Conset Part I. Chap. 3. Sect. 3.

clamation for creditors, ' in the Bodleian Precedent Book. Here it is.(I) ' George Palmes etc. to our beloved in Christ the Dean of the Deanery of Harthill and Hull, Aynstie, Pontefracte ? and Ripon, and also to all and singular curates of parish churches wherever constituted within the aforesaid deaneries.

Greetings in the Lord. John Edwynne widow, and William Edwynne the brother and executors named in the testament of John Edwynne formerly of the citye of York merchant , deceased , have informed us that certain persons pretending that the same John Edwinne deceased was indebted to them in certain sums of money at the time of his death, have petitioned for and claimed and pretended title to heavy and excessive sums of money from the aforesaid Joan Edwynne and William Edwynne... far beyond the assets and the goods which belonged to the said John Edwinne deceased at the time of his death. By occasion of which the said John Edwinne and William Edwinne, executors aforesaid have not dared to administer the goods which belonged to the said deceased or (undertake) the burden of execution, but the goods of the deceased being under a safe custody still remain so ... not administered, nor the debts of the same deceased paid by any means... We therefore commit to you, jointly and separately and firmly enjoin you , ordering you that you monition peremptorily and cite publicly and have cited in your parish churches aforesaid and also in the public market places of Pontefracte, Waikefield, Ledes and Ripon, on the market days of the aforesaid towns and in all other public places

(I)Bucks. Archd. M. S. d. 4. F 54.

where it shall seem necessary and expedient to Oswin Edwinne, a first, second, and third time all and singular the creditors of the aforesaid John Edwinne deceased in general laying claim and wishing to lay claim to these sums of money , whom we also , by the tenor of the presents, so warn and cite that they appear either themselves or by their attornies or proctors sufficiently and legitimately constituted before us or our legitimate substitute in the Exchequer of York aforesaid on Wednesday m viz. the first day of December next coming after the date of the presents with all and singular their obligations, writings, muniments and other legitimate proofs concerning these sums of money owed, as is said , to them by the said deceased, to duly petition for , prove, and take oath upon them, as shall be just.

Intimate moreover to them or have intimated to them... that if on the said day and place they do not care to appear or propound we shall administer justice to the creditors then and there appearing before us, and proving their debts legitimately and taking a sufficient oath or our deputy will administer justice. And we intend to proceed to the paying of the debts of the said deceased and the administration of his goods so far as his means extend and the laws require, notwithstanding in any way the absence or rather the contumacy of these creditors.

And duly certify to us or our legitimate substitute on the said day and place what you do in the premisses or any of you do, by your letters patent or by word of mouth of you or any of you. Given at York

under the seal of our office aforesaid. '

A t ' testimonial upon the administration made by the ordinary of the goods of a person deceased intestate ' (I) is worth quoting in this connection. It issued from the Commissary General of the Official of the Court of York and rehearsed that a certain J. B. of B. had died intestate, and that the widow had refused to administer. Administration accordingly belonged to the Archbishop. The official therefore ordered that the goods should be appreciated by faithworthy men who knew their quality and coul set a price of on them and an inventory should be made and all the creditors of the deceased cited to appear before him in the Exchequer to se and hear a sharing (defalcacio) division, and distribution of the goods, and when they had shown their evidences to receive the debts for which they had petitioned proportionately. In this case the administration seems to have been made, not by the creditors , but by the ordinary for their benefit.

SEQUESTRATION.

' The ordinary ' says Swinburne ' may sequester the goods of the deceased until the executors have proved the testament, so may the metropolitan , if the goods be in divers dioceses.' (2) Similarly sequestrations could be ordered in the goods fof a person who had died intestate. Here is an example of a sequestration of the goods of a person who has died intestate or was presumed to have done so.

(I) Cam. M. S. Addit. 3II5 F 97. (2) Swinburne 477, 478.

' Sequestration of the goods of one dying intestate.

George etc. to the discreet men etc. jointly and separately. Greetings in the Lord. We have heard from the relation of trustworthy men lately come to us that N. N. of N. of our jurisdiction has died and we do not know whether he has made a testament or not. Therefore we sequestrate , by the tenor of the presents, all and singular the goods, belongings and chattels and debts of the deceased at the time of his death so that no injury may come to his creditors and it is our wish that the custody of the sequestration be confirmed among the acts. We order you therefore that you publicly announce that the goods belongings chattels and debts aforesaid have been and are sequestrated by us and that you sequestrate all and singular of them and under and saving the sequestration you make we depute you and any of you jointly and separately , as is said custodian or custodians of the said sequestration.

Furthermore inhibit all faithful Christians whom we also inhibit by the tenor (of the presents) that none of them rashly presume to a lay hands of these goods which have been sequestrated in this way without the right and legitimate authority to do so, under pain of the greater excommunication. Given at York under the seal of our aforesaid office. etc. ' (I)

An early example of an order to sequestrate is given in the Cambridge Precedent Book under the title ' Letter to sequestrate the goods of a deceased person and to cite the executors if there are any.' (2)

(I) Bucks. Archd. M. S. d. 4. F 8. (2) Cam. Addit. M. S. 3II5 F I05.

It issued from the Official to a rural dean and rehearsed that the Official had learned that a certain person had died intestate , and that he was still ignorand whether he had made a testament or not. The Official therefore ordered the Dean to sequestrate all the goods belonging to the deceased being in anyone's possession and have them taken care of until another mandate arrived from the Official. Moreover the dean was ordered to cite the executors of the deceased, if he had appointed any, otherwise the occupiers of the goods to appear before the Official on such ad day. The dean was to certify what he had done.

It will s be seen in the light of the foregoing examples that sequestration was the gathering in and keeping in safe custody of the goods of some deceased person, under the ordinary's orders.

COLLECTION OF DEBTS.

' If none of the kindred ' says Swinburne, ' will take administration then it shall be granted to those who shall desire it, and if none will take the administration the ordinary may grant letters ad colligendum bona defuncti and thereby take the goods of the deceased into his own hands, wherewith he is to pay debts and legacies, so far as the goods will reach, for which himself becomes liable in law, as other executors or administrators.' (I)

These letters were also issued to ecclesiastical officials and administrators in order to facilitate the collection of the debts and

(I) Swin. 448. quoted by Burn, who suggests this is an addition to the original M.S.

and other assets of the deceased, which was probably always a troublesome business. Here is an example of a commission to collect.

' Commission to collect... until the testament of the deceased (is proved) and administration ...(committed.)

George Palmes etc. to our beloved in Christ J. R. Greetings in the Lord. We commit our powers and full power in the Lord by the presents to you, in whose fidelity prudence and industry we fully confide to collect , hold, [illegible] and receive all and singular goods, belongings , chattels, sums of money and debts whatsoever which belonged to Homell Percy formerly of Ackworth, deceased, being within the jurisdiction of the said most reverend father at the time of his death.

And we appoint, ordain and depute you collector of these goods belongings , chattels, sums of money and debts , ordering you by virtue of your oath taken before us in this part that you make a full, true and faithful inventory of all the goods, belongings, chattels, sums of money, and debts in and exhibit it to us, having promised above all that in the mean time you will not administrate or dispose of these goods, belongings, chattels, sums of money and debts in any way, but will keep them intact until such time as the testament of the said deceased is fully proved and administration of the said goods is committed to the executor of the said deceased by us or by our authority, and that you will indemnify the aforesaid most reverend father in Christ and us and his officials and ministers whomsoever for any uses

you have made by reason of this your collection , and further that you shall execute what has to be executed in this part , in such a way however that you give in a faithful account before us in the Exchequer at York when the aforesaid testament shall have been properly and legitimately proved , without any further delay.

We accordingly inhibit all and singular deans and other ministers of the said most reverend father in Christ that none of them rashly impede you in this part, under penalty of law.' (I)

Another form of commission of this sort given by the Bodleian Precedent Book is a ' Commission to collect debts where the share (defalcacio) preceded. ' (2) It was a commission granted to Oswin Edwinne, the brother of the Edwinne or Edwynne who had died intestate and is noticed in the ' Monition or proclamation for creditors ' mentioned above.

Oswin Edwynne is commissioned by the Commissary of the Exchequer to collect the debts of his dead brother, in this case no other assets are mentioned. When he has collected them he is to take care of them .

The commission mentions the ' oath taken by you in this part before us that you should take care to deliver intact a faithful account and reckoning of these debts which you have received and also pay whatever was collected, held , received, or recovered by you in this part to the same most Reverend Father in Christ or us, the Commissary of the Exchequer for the time being so often as you have been properly and legitimately

(I) Bucks. Archd. M. S. d. 4. F 23. (2) Idem F 90.

asked on the part of the said most reverend father or us or our then commissary, and that you give them back in that mind or intention in which you received or recovered them , to be distributed and applied to the better and further satisfaction of the credits of the said John Edwynne, formerly of our jurisdiction.' (I)

The forms of letters to collect which empower persons to collect the debts of some deceased person do not differ greatly from the commissions cited above. Here is an example.

' George Palmes, etc. Commissary and Receiver General to our beloved in Christ A. B. natural son of J. S. formerly of York, deceased. Greetings in the Lord. We appoint , ordain and depute you, in whose fidelity purity of conscience, prudence and industry we fully confide , collector by the presents, to collect, hold and receive all and singular the goods, belongings, chattels and sums of money whatsoever which belonged to the said deceased at the time of his death, within the jurisdiction of the most reverend father, being in anyone's hands, and to preserve all and singular goods so held and recieved by you under and saving a faithful custody , and we order you by virtue of your oath taken before us in this part and firmly enjoin you that you make a true and faithful inventory of all and singular goods belongings and chattels and sums of money and debts in whoever's hands , and exhibit it to us before Passion Synod next coming after the date of the presents in the Exchequer , provided above all that in the meantime you do not by any means administer these

(I) Bucks. Archd. M. S. d. 4. f. 3.F90

these goods, chattels and debts aforesaid or dispose of them but keep them intact... and we inhibit all and singular Christians being within the diocese of York that they do not rashly hinder you in this part under penalty of law. Given at York under the seal of our aforesaid Office.' (I)

Another interesting letter to collect is given by the same precedent book. It is not said from whom it emanate, but presumably the sender was the Archbishop. It is addressed to Wilfred Lee, squire , and rehearses that the sender has learned that Lee's brother, Edward Lee, formerly Archbishop of York, has died and that Lee wished to collect his assets and pay his debts but was unable to do so as the See of York was vacant and there was no ordinary before whom he could appear. The sender therefore, wishing to incline to Lee's requests and lest the goods of the deceased should be dissipated and not kept to pay his debts, has committed free faculty by the present letter to Lee to collect all the goods credits and chattels which belonged to the deceased and administrate them when their value has been first assessed. (2) He furthers orders Lee to render an account when he has been asked to do so. (As has been said this letter to collect presumably issued from the Archbishop. The usual ordinary for the probate of Archbishops' wills was the Judge of the Audience or Chancery Court.

The Bodleian Precedent Book also gives an example of a ' letter attorney to collect debts.' (3) A letter attorney was a sort of proxy

(I) Bucks. Archd. M. S. d. 4. F 4. (2) Idem F. 85. (3) Idem.

by which a party made someone his attorney to act for him in legal affairs. Like a proxy it contained a clause ratifying whatever the attorney might do. Here is the letter of attorney.

' Know all men by the presents that I Mellesina Ledes, the wife of Thomas Ledes of Northmilford, parish of Kirkeby Wharf, natural sister and administratrix of the goods of Anne Prestons of the parish of Nafferton widow deceased by special license of the said Thomas my husband, have made my attorneys and put in my place my beloved in Christ B. L. of the city of York , gentleman and B. T. of L. cleric as my true and legitimate attorneys or proctors to ask for collect and receive in my name and for me all and singular goods property, chattels, credits and sums of money and debts whatsoever belonging to the said Anne Prestons, being in anyone's hands at the time of my sister's death.

I give and concede to them , my attorneys or proctors jointly and either of them by himself separately full power and authority to deliver to any person or persons the said goods, property, chattels, credits , sums of money and debts aforesaid or any of them, ... to hold occupy arrest and receive them in the presence of judges spiritual or temporal if it should be necessary and to do, exercise and expedite what shall be necessary or p opportune in the premisses and about them. And I shall ratify all and everything they my aforesaid attorneys or proctors or either of them shall do in the premisses and in any of the premisses as if I were personally present. In testimony of which thing I have att-

-ached my seal to this present writing. Given the I5th day of December I544 and the year of the reign of King Henry VIII the thirty sixth.' (I)

Once granted a letter to collect which issued from the ordinary might be revoked. An example of a revoked letter to collect is given by the Bodleian Precedent Book in the ' Revocation of a letter to collect previously made.' (2) In it George Palmes revokes the letters to collect which he formerly issued to two persons , ' ex superhabundanti,' * and inhibits them from making use of them. The goods, belongings and chattels which they have collected hitherto are to be handed over to the lady E. to whom administration has now been granted. This grant of an administration is the reason for the revocation of the letters to collect. The goods are to be handed over ' without diminution , with all the speed you can effect. ' The former collectors are to certify what they do to the commissary.

The persons receiving these letters to collect gave an obligation to the Commissary for the indemnify of the Archbishop, the Commissary, and the other officers of the courts. Here is an example.

' Obligation for a letter to collect.

Know all men by the presents that we, Thomas Edmundes of Kingston on Hull merchant and Robert Paycoke of York city ... merchant are held and effectively obliged to the most reverend father in Christ and Lord the Lord Edward by divine permission Archbishop of York, primate of England

(I) Bucks. Archd. M. S. d. 4. F 85. (2) Idem F 47. * A difficult phrase which might be translated ' out of our superabundant power.' It probably meant much the same as ' ex officio.'

and metropolitan and the commissary and Receiver General of the Exchequer of the said most reverend father at York in the sum of £ 20 of good and legal money of England to be paid to the most Reverend Father and George Palmes of their certain attorney on the Feast of Pentecost next coming after the date of the presents . To make which good and faithful payment we are, as is aforesaid, obliged and either of us is obliged wholly and completely and our heirs and executors and all our goods, rights , and moveables by the presents. Given (and) sealed with our seals on the fifth day etc. '

The condition of this obligation was as follows.)

' The condition of this obligation is such that if the above obliged Thomas Edmunde and Robert Paycoke indemnify the aforesaid most reverend fatheri in Christ and George Palmes, the aforesaid Commissary for any uses made by reason of the letters to collect the goods of Peter Nicholson deceased , formerly of Kingston on Hull, made and conceded o to the aforesaid Thomas and Alice his wife formerly the wife of the aforesaid Peter Nicholson deceased and also make a full,whole,true and pfaithfully indented inventory written on parchment of all and singular the goods belongings chattels and sums of money whatsoever... without any sleight or fraud whatsoever, then the present obligation will be held as null, otherwise it will stand in all its strength and effect. ' (I)

PAYMENT OF DEBTS.

By Magna Carta (2) the king must be paid before any other creditors,

(I) Bucks. Archd. M. S. d. 4. F 6. (2) Chapter 18.

if an intestate person had died in debt. Even higher in priority came the funeral expenses and the fees for administration, (I) after which there was a definite order of precedence for the payment of the various debts.

If the deceased had died so heavily indebted that the amount of the debt exceeded that of the goods a ' rate ' was paid on the goods, as has already been indicated above. That is to say the goods were shared out amongst the creditors. Here is an example of a commission which empowered a rural dean and a chaplaint to pay debts in this manner.

' Commission to pay the rate.

Edward Kellet, etc. Commissary and Receiver General to our beloved in Christ the Dean of the Deanery of A. and M., John W. Chaplain, sufficiently and legitimately deputed collectors of the goods of Thomas Pallisser, formerly of Ledes deceased. Greetings in the Lord. We commit our powers and full power in the Lord by the presents to you to pay and satisfy all and singular creditors of the said deceased all and singular sums of money owed to those creditors by the said deceased at the time of his death, and proved according to what the law demands, in so far as his goods suffice to do it. And if when you have first made a comparison and enquiry into the amount of the goods and the aforesaid debts you find they do not suffice to give full satisfaction then you are to pay to anyone his proportion in so far as the goods

(I) See Burn Vol. II. P. 678-9 for an account of this

extend and not otherwise nor in any other way. ' (I)

A similar commission issued from John Rokebie to the Dean of Holdernes, with the addition that mention is made of the creditors proving their debts before the ordinary ' according to what the law demands.' (2)

ADMINISTRATOR'S ACCOUNTS.

Although something has already been said about accounts it will be as well to glance at them again. Here is a citation from the Cambridge Precedent Book calling on administrators to appear and show an account.

' Citation to certain persons , administrators of the goods of a certain person, to render an account.

The (Commissary of) the Lord Official. Cite peremptorily C. (and) F. , administrators in the goods of J. of P. deceased, deputed by our ordinary authority that they appear, etc. (on such a day) next coming with a full inventory and with any other instruments concerning the said administration in any way, to render personally a faithful account upon the administration made in the goods of the same deceased, and if need be , be sworn upon it and to do etc.' (3)

Here is an example of a testimonial upon an administrator's account. This was the document which finally closed the account of the administrator with the ordinary. As the administrator is also described in the document as an executor, as the deceased had died intestate , and as the administrator 's second initial is the same as that of the deceased, it seems not

(I) Bucks. Archd. M. S. d. 4. F 27. (2) Bucks. Archd. M. S. d.4. F 25.
(3) Cam. M.S. Addit. 3II5 F 5I.

unlikely that this was an administration with the will annexed, which has been described above. Here is the testimonial.

' Testimonial upon an account.

Walter Jones, bachelor of laws, Commissary of the Exchequer etc. to all faithful Christians to whom the present letters shall have come. Greetings in the Lord.

Know that the aforesaid account of R. B. executor of the testament or last will and administration of the goods of J. B. , formerly of N. deceased intestate having been made and declared judicially before us, as more clearly appears and is plain from the indented schedule, whereas the said R. B. executor of the aforesaid administration has fully and wholly administered and has also payed and satisfied £10 of his own money and goods beyond the extent and sum of the goods rights and credits contained in the inventory of the same deceased formerly exhibited in the aforesaid Exchequer at York as fully appears, as much by the bill, acquittances and other legitimate proofs exhibited and remaining in the aforesaid Exchequer of York as by the corporal oath of the said accountant taken before us about the truth of his account, we therefore dismiss and release in as much as we are concerned and as we lawfully can the same R. B. aforesaid from the task of rendering a further account in this part by the presents, saving anyone's right. Given etc.' (I)

ADMINISTRATORS' ACQUITTANCES.

(I) Bucks. Archd. M. S. d. 4. F 4.

Administrators' acquittances were the documents which released the administrator from rendering a further account, and certified that he had administered well and faithfully. They were in fact much the same as the testimonials given upon accounts and they may be regarded as more formal versions of those documents. There is only one example of an acquittance for the rendering and acceptance of an administrator's account in the precedent books and it is an early one. Though acquittances were still given to executors on the completion of their duties in Elizabethan times it is legitimate to speculate whether acquittances had not been replaced during this period by testimonials upon administrators' accounts.

Here is the acquittance.

' Acquittance of the administration made upon the goods of a person deceased intestate.

Know all men by the presents that we, the commissary general , legitimately deputed , of the Lord Official of the Court of York, having heard before us the account of M. widow of T. M. deceased intestate, administratrix of the goods of the deceased , about this her administration made, and whereas we have found the said M. administratrix of the goods of the said deceased has well and faithfully administered and has rendered a legitimate account in all things, therefore we, the aforesaid commissary absolve the same M. administratrix from all further rendering of an account in this part in so far as pertains to our office, saving anyone's right , and we dismiss ther as absolved by the presents, sealed with the

pendant seal of our office. Given etc. ' (I)

DISTRIBUTION OF INTESTATES EFFECTS.

The distribution of the effects of intestate persons was made differently at York from the procedure in the southern province.

The custom of York, under authority of which this distribution was made , has not received much notice from writers on ecclesiastical law. As Burn says. ' It is somewhat strange that so few authors have taken any pains to inform their readers or themselves... and these customs are so ancient , and of ancient times were of such general and almost universal extend that some of the greatest lawyers have doubted whether they were not part of the common law.' (2)

This particular custom, and many others, a is set out in the pages of Swinburne . It may be worth while to quote here Burn's remark on Swinburne.

' We must despair of obtaining a more perfect delineation of the custom of the province of York , as it was in Swinburne's days, than Swinburne hath exhibited . He was a diligent searcher into antiquity was nearer to the fountain head than we are by almost two hundred years ; was acquainted personally with the most learned men of that time ; and made it his employment to examine minutely into this particular custom ; and above all was master of the acts and records of the court of York and availed himself of that treasure.' (3)

(I) Cam. M. S. Addit. 3II5 F II6. (2) Burn's Ecclesiastical Law Vol . II P. 733. (3) Idem P. 736.

The custom of York relating to distribution was as follows.

' It is to be understood then that within the province of York generally there hath been an ancient custom, and divers famous writers long ago have made mention of the said custom in their works to have been observed long before their days and the same also appeareth from the acts and other very ancient instruments of an undoubted credit faithfully preserved in the registry of the archbishop of York ; by which custom there is due to the widow and to the lawfull children of every man being an inhabitant or an householder within the said province of York, and dying there or elsewhere intestate, being an inhabitant or householder within that province, a reasonable part of his clear moveable goods, unless such child be heir to his father deceased or were advanced by his father in his life time, by which advancement it is to be understood that the father in his life time bestowed upon his child a competent portion whereon to live.' (I)

If the deceased had left a widow, the estate was divided into two parts of which the widow had one. If an only child were left an orphan the estate was again divided int two parts, of and one part went to the child. ' (I) (2)

This custom also extended to the estate of persons who had left written testaments. No one might bequeath the ' reasonable portion ' away from the person to whom it should go. In the case of a child the portion was called the ' bairn's portion.' The state of the law regarding testamentary disposition at York is rehearsed by the statute of

(I) Swinburne 220, 239, 233. (2) Idem 220.

4 W. c. 2. ' whereas by custom within the province or other usage, the widows and youngest chidren of persons dying inhabitants in that province are intitled to a part of the goods and chattels of their late husbands and fathers called her and their reasonable part , notwithstanding any disposition of the same by their husbands and fathers last wills and testaments.' (I)

Burn traces these customs to the feudal law, which survived longer in Yorkshire and the north generally ' by reason of the continual incursions of the Scots.' (2) ' The eldest son was fittest to bear arms ; and to the end that during the service he might be able to sustain the dignity of the military profession he succeeded to the whole estate of land, and that the other children might not be destitute a portion was provided for them out of the personalty which the father might not give from them by will, nor the ordinary by distribution in case of intestacy. ' (3)

CHAPTER EIGHT. GENERAL CONCLUSIONS.

No survey of the courts of York would be complete without an enquiry into the general effects of the courts ' jurisdiction. This enquiry has been confined to certain aspects of the jurisdiction, and no attempt has been made to cover the whole ground of the mass of complaints made against the courts and the apologetics for them which can be found in the Cottonian Collection and in the pages of Strype. At the same time such a survey is urgently required. The more the matter is studied the more it becomes

(I) 4. W. c.2. (2) Burn Ecclesiastical Law. Vol. II. 735. (3) Burn P. 735.

evident that almost all, if not all the complaints are inspired by the Puritan Opposition, and reflect, not real grievances, but Puritan dialectic. It is not difficult to see why the Puritans should have disliked the ecclesiastical courts. In the first place they were part of the Church of England, everything concering which was of course bad. They also represented a survival from the unreformed church, and were thus not only bad , but damnable. ' If you look on our L. Bishops their chancelors Archdeacons, Commissaries etc. and joine (that which they work by) the cannon law : What shal you finde but that the Pope hath his horse readye sadled and brydled , watching but the time to get up againe,' (I) wrote the Puritan author of the ' Humble Motion with submission,' but there is nothing humble or submissive about his attitude. He wants the whole framework of the courts abolished, and the civilians ' converted on other ways to more profit.'

This was the standpoint of the Puritan Opposition, and consequently their excessively long petitions are not very useful from the view of illustrations of the courts, and public opinion concerning them. The petitioners had little knowledge of the courts and small interest in improving the condition of the litigants in them. They make slips such as referring to ' sergeants ' in the ecclesiastical courts which raise the question of whether they themselves were ever in a consistory in their lives. With the exception of ' the spiritual courts epitomised ' they fail to touch upon the real grievances against the courts. This

(I)' An humble motion with submission unto the right honourable l.l. of hir majesties privie counsell.' Lambeth Lib. Revel. 3. 20.

concentration upon purely imaginary grievances , or perhaps it would be better to say purely religious grievances, can be seen in the fact that the petitioners complaint to Parliament and Convocation. In the Council records , on the other hand , which was the forum for complainants who had a grievance which they wanted redressed as quickly as possible , there are no complaints against the ecclesiastical courts to set against the great body of complaints against the common law practice. The whole discussion of grievances in the courts in the Cottonian collection seems to be maintained on a theoretical and impractical plane . The question has been clouded by the fact that the Bishops took these complaints seriously. The Elizabethan hierarchy were always interested in a difference in religious outlook, and had, many of them, Puritan sympathies. They tended therefore to attach more weight to complaints made from the stand of conscience than an earlier episcopate might have done. The resulting apologetics, like the Puritan attacks , had probably very little connection with the point of view of the ordinary people who made use of the courts.

The ecclesiastical courts at York do not appear to have gone nearly so far downhill as some writers have inferred, and this was probably true of the courts as a whole. While there were features of the court machinery which might well have been improved it is well to remember the words of an apologist for the ecclesiastical courts ' there is no law nor function in this worlde voyd of exception and imperfection and

to have it void thereof est optandum magis quam sperandum , as in Platoes Common Welthe. ' (I)

There is one aspect of the courts in particular , that of their ability to enforce their orders of which it would seem on the whole too gloomy a view has been taken. Whatever the case may have been in Gloucester and the other bishops' consistories only a small proportion of litigants at York remained defiant of the court authority, in fact the number of really desperate cases , if we can judge from the significavits enrolled in Chancery , was only three a year. This was not a large number in view of the large number of litigants who must have sued or been sued in the York courts during the whole of the period, indeed it probably compares favourably with the number of litignats , out of a comparable number who came before the Common Law courts, who became outlawed and fled to Alsatia, the Marches and some of the sanctuaries for lawbreakers which existed during the Elizabethan period. This view is borne out by a letter which Whitgift wrote in I583 emphasising the need for the High Commission. Some of the more important paragraphs are worth quoting here.

' I. First, the ecclesiastical censures are too short to meet with notorious adulteries and incests , which are punished only by a white sheet. But by the commission they are punished by fine , which is very commodious to the Queen, or by imprisonment etc.

II. If any such notorious offender fly the diocese of his Ordinary he cannot be gotten to be punished buty by the said Commission,

(I) Strype's ' Whitgift ' Appendix III. ' A Book of Articles ... offerred to the last session of Parliament anno 23 Eliz. I580 ... with an answer to the same.'

III. If a man put away his wife, sine alimoniis and fly into another diocese and so from diocese to diocese he cannot be called out but by the commission, nor she relieved.

IV. If any wife either contracted or married flee from her husband into another diocese and so from diocese to diocese she cannot be come by but by the commission.

V. There is no law to compel any man or woman to stay lite pendente from contracting or and marrying, but the admonition of the Judge which they contemn. But the commission bindeth them not to contract.

VIII If a benefice be litigious, the church door shall be shut up service shall be unsayed and great quarrels shall grow about the fruits yf the commission do not by sequestration helpe etc. For the Bishopps sequestration they will contemne, because he can but excommunicate. And by that time the writ de excommunicato capiendo can be sued out the service of God shall be intermitted peradventure a yere or two.

IX. No notorious fault in any Ministre can be notoriously punished but by the commission.

X. The whole ecclesiastical law is a carcasse without a soul if it be not in the wantes supplied by the commission.' (I)

Whitgift seems to imply then, that the procedure by significavit and writ of 'excommunicato capiendo ' will eventually lay the offender by the heels , but that it will take a long time to do so. He also shows

(I) Strype's ' Life and Acts of Archbishop Whitgift.'

that people are prepared to fly from diocese to diocese rather than face the apparent certainty of attachment by the sheriff's writ. Procedure in the courts, then, is effective, but slow. It requires the help of the High Commission to deal with drastic offences and extraordinary offenders. As has been shown already an offender might be forced to take bond before the High Commission to ensure his further appearances in court.

Some of the other aspects of the courts of York constituted a much more serious menace to their efficiency than did any failure on their part to ensure that their orders were obeyed. Among these aspects were the bribery and influencing of the judges, the packing of the courts with nonentities through jobbery, the effects of the proctorial organization at York, which had in effect created a monopoly of counsel, and the delay in putting causes through the courts.

There were several considerations which might induce a judge to divert justice out of its ordinary course, the first of these was bribery.

' They have their judges, ' says De Maisse, the French Ambassador who was not long landed in the country , ' and there is an infinite deal of roguery amongst them, connivance at marriages, excommunications and censures and there are as many litigants amongst them as before , perhaps with disorderliness.' (I) Perhaps De Maisse had heard of the old lady of ninety two , ' past memory ' who was known to Mr. Valentine Knightly in Northants , and had been married by special license to a young man of twenty one, ' and was dead the next morning.' (2) Marriage licence scandals

(I) De Maisse ' Journal ' Nonesuch Press 1931. P. 20. (2) ' A note of divers incestuous and unlawful marriages.' B.M. M. S. Room Cott. Lib. Cleo.2.

were a common place , as were those relating to the bribery of ecclesiastical judges. One litigant even tried to bribe Archbishop Parker, who wrote to Burghley. ' I perceive the matter is very hotly taken ,and Stowell careth not what to spend so he may have his fair lady, for as one informed me yesternight he is offerred a hundred pounds and another of my house two hundred pounds to mollify me in this case. (I) Evidently Stowell felt that even an Archbishop was not incorruptible and Parker possibly regarded his action in refusing the money as unusual, in an ecclesiastical judge, as he added . ' Our posterity shall judge of us that money and mastership worketh all with us in our time.' (2) In another letter to Burghley Parker complained that the High Commission, which should find its main work in the correction of papists was being filled with ordinary ecclesiastical causes because of the difficulty of poor people in finding justice in the ordinary courts. ' Papistry is the chief en wherein we should deal, and yet the clamorous cry of some needy wives and husbands do compel us to take their matters out of their common bribing courts, to ease their griefs by commission. ' (3)

Bribery need not take the shape of hard cash. Great use was made of ' mastership ' political influence. Here is a letter written by Archbishop Sandes to the Earl of Shrewsbury which has already been referred to several times.

' My honourable good Lorde, uppon yor lettre in the behalfe of Roger Beckwith I called him into mys Consistory in the Cathedrall Church the xvith

(I)Parker to Burghley I3th Nov. I573. Parker Correspondance Lett. CCCXII.
(2) Idem. (3) Idem Letter CCCXLIV. I5h Nov. I575.

of this instant May and used him with suche Curtesie for yor sake as I never used offendour before, whiche thinge all the whole Courte canne recorde, for I chose but one advocate for the office and left all the others unto him. And when he praied that he might have him whom I had chosed I also yelded therunto and tooke only one of those whome he had refused. And I will hereafter procede in such sorte that he shall have the full benefitt of the lawe. Yor phisicion Mr. James bringeth me a presentacion of a benefice called Wilforde whereunto Sir Gervase Clifton being patronne presented one this laste weeke. I doubte not but yowre L. may easely ende that Controversie. I have no newes from London to imparte unto yor L. The bringer herof came lately from thence and canne saye somewhat to yor L. I suspecte that the parliament will holde if it do I shalbe overchardged...' (I) Shrewbury noted on the back of the letter ' Archbisshopes letter, mete to be kept...' What the ' full benefit of the lawe ' and the reverse of it meant will be seen later , when the case of the Earl of Westmoreland is considered.

Besides Sandes there is definite evidence of one York judge yielding to undue influence of a corrupt sort. John Bennet was indicted and convicted before the Star Chamber for selling administrations when judge of the Canterbury Prerogative Court, but nothing can be made out against him during his tenure of office as Vicar General and Consistorial Official at York. (2) One of his colleagues however , Robert Ramsden, the Archdeacon of the West Riding almost certainly took a bribe. It is

(I) Lambeth Lib. Cod. Tenison 698. (2) D. N. B.

recorded of him in the Consistory Court Book that ' Guillelmus Pace uid iudicially confessed in open court the nynth of November I588 that Mr. Ramsden Archdeacon had xls of him for his absolucion, being called before him for adultery or fornicacion.' (I) This confession does not seem to have affected Ramsden's tenure of office in any way, he continued Archdeacon until his death in I596, and was buried under the epitaph ' Right dear in the Sight of the Lord is the Death of his Saints .' (2) Of course all ecclesiastical judges at York were not like Sandes. John Rokeby for instance would not entertain his friends if they had suits before him , and had all letters concerning causes read in open court. (3)

Influence from the Crown might also divert the course of justice at York and to this even the most upright official had to bow, though Rokeby was able to effect a compromise, as his nephew relates. ' King Henry VIII once commanded him to give sentence in a cause of matrimony betwixt Sir Anthony Lee, and one of the King's favourites. He entered in thus . ' It is the King's pleasure , but it is against the Law.' (4)

Probably the most outstanding example of royal interference at York occurred in the case of the Earl of Westmoreland. The matter began with a letter from the Queen to Archbishop Thomas Young, dated August I7th I56I. Here it is.

' For ye Archb. of York.

R. Reverend Father,

We have herd good report made of your diligence used in visitation

(I)End fly leaf of Consistory Crt. Bk. I587-89. (2) Browne Willis ' Survey of the English Cathedrals.' (3) B. M. Addit 24470. (4) Idem. F 565.

of your dioces but yet we fynd it strange that in your dioces or provynce the Erle of Westmorland is permitted to kepe ye sister of his former wiffe in maner as his wiffe, being as we thynck contrary to ye louv of God and of man . Such examples so suffered must nedes offend God and doo great hurt ins slaunderye of our realme. We therefore will that yow take order in your provynce that nether this nor such lyke disorder be suffred uncorrected and this we councell ye rather for ye weale of ye sayd erle, c being of our realme to whom we wish well, for many respects, as we dout not but he knoweth our favorable meaning towards hym and his howse. Our pleasure is ye shall in this matter procede by ye auothoritie which yow have as Archbisshopp without notefying to any of theis our lettres wrytten to your Grace under our signett.' (I)

Young reported on the turn events were taking to Cecil in the following words .

' And as concerning the Erle of Westmoreland 's matter this bearer my Chauncelor can make reporte thereof whoe hath also with ym hym the Copie of all my proceedinges hitherto therein. He is marvellouslye affectyd to this his pretensed wyffe. I thynke that manye lawfull husbandes in England be not in suche love with theyr lawfull wyffes. He hath ben with me hymself and hath made many earneste requestes for his quietnesses and continuance with a greate numbre of teares. My answeres and perswasions in that behalfe hath not been very pleasaunte unto y hym, neverthelesse he standethe in hope that judgement must passe on his syde, being incouraged as he and his reporte

(I) S. P. D. I2 Vol. XXIX. August I7th I56I.

by Mr. Whitehed and such other singler divines and not altogether destitute of the help of lawyers, for the deane of the Arches hath already ben here being retayned of hym and doth intende to come agayne againste the next sittinge which shalbe the I4th of January at Yorke , at which tyme I thinke we shall shortly growe to an ende...' (I)

Westomoreland had written to Burghely previously to the letter quoted above . In spite of Elizabeth's instructions to the Archbishop to be secret, Westmoreland had divined the real mover in the action brought against him, as can be seen by the following extracts.

' And although my fortune hath heretofore ben such that it I have ben subject to many troubles .. yet chaunced there never thinge unto me wherewith I was so sore perplexed and grewe sowerey of my life as with this matter of my marriage for the which I am by my Lord Archebussop of Yerkes grace called into the spiritual Courte. And although yt semeth to me my L. (i.e. Young) to be so wyse and honorable that he will do me no wronge nor offer me any iniustice yet he hath gyven me very shorte dayes of answeringe in which tyme I cannot possible bringe downe my Councell.

My grefe is not so much for that I am troubled .... seinge I have done therin nothing either agaynst gode's lawes or the lawes of this Realme , but for that there cometh a Rumor all over the Country and meteth me well nigh in every place where I goo that the Quene's majestie shold take it in evell part and be my heavy Ladye and Mistress, which is my greatest

(I) S.P.D. Vol. XX. P. 25. Young to Cecil.

grefe and doth most trouble me.. Therefore I am the more bold upon the trust I have in you to desyre you to be a suter for me unto the Quene's majestie that hir grace (in consideration of my true and faithful service done unto hir father, brother and sister, and my true hart to serve hir highnes with such greet will, that if every here of my hed were a man I wold spend theym in hir service) woll have consideracion on me and for my true hart and faithfull service not to see me defaced in my country...I doubt not but what by your mediation and sute unto hir grace she woll stand my good Ladye and woll vouchesafe my L. the Archebusshop of Yorke to desist any further to procede with me in this matter until I have mayde my repayre unto hir majestie.' (I)

It is obvious that in this case the royal command to the Archbishop had in effect prejudiced Westmoreland's chances of winning his cause considerably. As the writer on the Court of Arches who is to be quoted shortly points out, a word was enough to indicate to the lesser officers of the courts how the judge wished a cause to go, and they would act accordingly. The queen makes no doubt in her letter that Westmoreland is guilty, and Young is obviously acting in accordance with her wishes. He seems to have cut short Westmoreland's term to reply to such a degree that Westmoreland has not been able to fetch up his advocate from London in time for the handing in of the reply to the libel or articles. Possibly the fact that Westmoreland is bringing up London lawyers indicates that he feels the York advocates are prejudiced against him. In ecclesiastical courts such as

(I) S. P. D. XIX. 53. 20th September 1561.

those at York the judge's power was absolute, ' by reason that the said proctors be so abandoned unto the said juges t where men had moste nede of trusty counsaile there they be most destitute of the same, as when the juge is not indifferent for the partialities of a juge is more to be feared than the manifest malice of an adversarie , for t'one hurteth priviely and is able to execute his malice, and the other doth apertly all that he goth about, and a man maye provide for thavoyding of his intent... and though partialitie of any juge is to be gretely feared yet most of all in the cortes spirituall, where all dependeth upon the iuges handes, and that one man's commonly... it hath not been seldom seen and harde too , that it hath ben spoke unto soche proctors as hath spoken any thing constantly or frely in their clients' causes by the iuges aforesaid ' Non es amicus curiae,' and that they were threttened of expulsion fro' their offices and put to silence.' (I)

Young then probably prejudiced Westmoreland's cause by cutting his terms short as much as Sandes helped Beckwith's cause by showing him favour in open court. Westmoreland seems to have resented this blow from the Queen to himself and consequently to his own and his family's political influence in the countby very much, and it may be for this reason that the next rebellion in England is led by a Westmoreland, ' the first of his name that ever turned traitor to his King ' as one chronicler remarks.

The court officials at York were mostly the Archbishop's nominees

(I) B. M. M. S. S. Room Cott. Cleo. F I. /9I. ' Touching proctours in the Court of Arches.'

and most of them seem to have lost their posts when a new Archbishop was installed, or had to serve in inferior capacities.* It seems likely that some of them must have paid something to the Archbishop for their offices. It was quite legal to buy jurisdictions in the ecclesiastical courts until James I's time, (I) and this was complained of , probably with some reason.

The judges at York seem to have made a very good living out of their offices. Their income from the prebends and livings annexed to the various offices can be ascertained from the ' Liber Regis,' but it represented only a part of the official's gains - what those were depended largely on the official himself. (2) The judges exhibit signs of having been quite rich. John Rokeby for instance apparently acted as banker to the Rokeby family. ' For his liberality and hospitality ' says his nephew, ' all his friends and many strangers continually tasted. Some had of him I00 l. and more, as his nephews Christopher and Anthony, who I do myself with bounden thanks acknowledge to have received of him at one time to supply my necessities Ten pounds, so did my brother George Rokeby other I0 l. for to take his lease at Molton.' (3) It is certain that Rokeby took only what he was entitled to, and on the whole the other judges at York probably showed a similar restraint, but there may have been exceptions.

As the Archbishops had the appointments to many of the offices they naturally reserved these offices for their especial friends. This was not in itself pernicious. An archbishop might institute as his chancellor one of his early friends and no one , probably might think the worse of him for it.

(I) Until the ruling in 8. Jac. I. in Dr. Trevor's case. Quoted in Phillimore Vol. II. (2) B. M. Addit. 33207. (3) Idem Addit. M.S. 24470. * Not for instance Rokeby, who seems to have been appointed on Henry VIII's orders.

Sandes for instance appointed as his chancellor William Palmer, who had been his proctor at his confirmation as Bishop of London.(I) He was however determined to makepprovision for his children out of the courts as well as the church's patrimony (2) and this patriarchal system of appointment caused what was probably the finest row between members of the Elizabethan hierarchy, a notoriously quarrelsome lot. It was noted down, presumably by some shorthand writer who was present and later forwarded to London under the title of ' Ye differences betwyxt ye L. Archbysshop of York and ye Deane in ye gratter chamber at Duresme.' (3) The quarrel began originally over the matter of the Dean of Durham's ordination. He had received his orders at Geneva and had not had them confirmed in England. Once begun however the mutual recriminations soon went on to other subjects.

' Duresme. Vicesimo trio die Octobris I578. The L. Archbishop, eating nor drinkinge nor speakinge anie thinge all the dynner tyme , after the strangers were gone owt of the chamber and the L. President with the rest of the commissioners present ymeditlie after dinner in the great chamber of the bushops' of Duresme burst furthe in these speaches..'

.. By the lyvinge Gode ! ' said the L. Archbusshop ... 'Well,' said the Lord Archbishop ' (to Matthew Hutton, Dean of York , and later Archbishop there) ' Deane thow has sett thyselfe ever againste me since my first cominge into the countrie.'

' I tolde yor grace ' (said) the deane ' at the first I would norishe no faction, nor consent to devide yow and my Lord President.'

' Nay ' said the Lord Archbishop, ' thow hast bene ever against me and

(I) B Reg. Matthew Parker F I30. Lambeth Lib. (2) Browne Willis.
(3) B. M. M. S. Addit. 33207 F 5.

woldest never do anie thinge for me.'

' Becawse I would not confirme a patent to yor sonne of two hundreth marke out of the archbishoprick.' said the deane.

' Thow lyest ! ' said the Lord Archbishop. ' But I will tell yow, my Lord ' said the Lord Archbishop ' there is an office that Doctor Percy hathe and some of my predecessors hath ahad some part of yt, but I never toke anie of yt, and wold gyve yt doctor Percy and my sonne, that will bee as good a scholar as the deane of York, after hym for lyfe, which wolde be worth about a 100 marks.' *

Then said the deane , ' About two hundreth markes.'

' Mentiris egregie ! ' said the Lord Archbishop in great rage.

' Well, ' said the deane ' It was to me , sede vacante in one yeare 200 marks of theraboute. '

' Was yt so ? ' quoth the Lord Archbishop.. ' I trust yor maisterschip will pay it me againe, I will have yt.'

Then the deane said ' I had but as other Residenciaries have heretofore sede vacante had alwaies.'

' The other thinge that I desiered, ' said the Lord Archbishop ' was a confirmacion of a patent of the office of the Chancellorship for my chauncelor doctor Lougher.'

' Well ' said the deane ' yor graces sonne's patent is hurtful to yor Successors therfore I staied , and I tell yor grace plainlie I will not graunt yt.'

* That is after the death of one of the partners in the office the other took the whole proceeds.

Sandes gives more details of his approach to the problem of providing suitable officials at York in a letter to Burghley, in which after defending himself against charges against him, and blackening Hutton , he says.

' I am bounde in conscience to take care of my family , I have no landes to leave them as the Deane hath a great deale, and as fitt for me to bestow these upon my children (who I trust shall not be found unworthie of such help) as upon my servants or straingers... a third thing I was charged, withal , that I would needs geve a Patent of the Chancellorship to a boy of nyne yeres of age . O os impudens ! My Lord I have a sonne at Oxford a Master of Art of thre or four yeres standinge and the Dean himself will confesse that he is well learned and hathe ben a student in the Lawe, (as I take it) nowe two yeres and will in one yere followinge be fitt to proceade Doctor. I must confesse, that havinge nothinge else to leave him I was onc content to bestow this upon him... My late Secretary Symon Hill, had an office of the Registership of the Official , and myne eldest sonne was ioyned with him in it, who hathe supervised him. ' (I)

Good posts were found for them in the courts, as can be seen from the records. Richard Percy is described in the record of the Audience or Chancery Court of I586 as ' substitute of the venerable man Mr. Edwin Sandes Deacon and Master of Arts etc. ' (2) while elsewhere Edwin Sandos is described as ' Vicar General and Official Principal.' (3) Edwin Sandes' birth is recorded in the family bible, preserved at Hawkeshead School, as having taken place some time in I56I, so by this time he could not have been more than

(I) B. M. M. S. S. qu Lansdowne F. 50 quoted from ' Chapters in Yorkshire History ' J.J. Cartwright. (2) AB 52/ 93. (3) AB 52/94.

twenty five, and his appointment was consequently completely contrary to the Canons of I57I, which ordered that every ecclesiastical judge should be acquainted with civill and church law, twenty six years of age and a grad - uate practised in the court. (I) Edwin the younger was not the only poet in the family and Henry has recorded his office as register with the following brief distich.

' Henry Sandes is my name,
And with my pen I wrote the same.' (2)

All these noxious bits of jobbery, Symon Hill's post and the avarious posts for the two boys were of course depriving deserving and well learned civilians of officeswhi which were already too few to go round as Wilson pointed out.

As was said in a former chapter the proctors at York, in the three main courts were organized into a close corporation, much as the old Chancery barristers were. This system was itself an abuse, and lent itself to further abuses. It was not unique indeed it corresponded very closely to the arrangement of proctorial incorporation at the Court of Arches. By an ordinance of that court , which was confirmed by the Chapter of the Church of Christchurch of Cantbesbury the number of proctors who might practise in the courts was reduced to ten, a number which was not to be exceeded afterwards. The effects of this system are dwelt on at some length by an anonymous Elizabethan writer. (3) As his criticisms apply to York where exactly the same system prevailed, he will be quoted freely.

In the first place the writer points out that this ' incorporacion ' or banding together of the proctors ' though they call it not so ' is contrary

(I) Canons of I57I. Quoted Eccles. Courts Commission Report I883. Hist.App. I.
(2) Fly leaf , court book AB 34. (3) B. M. Cott. Cleo. F I / 9I.

to statute law without license. (I)

There will not be enough proctors to serve all the clients of the court . ' Though all x. were procuring there at ones, asi it is not like but that iii or iiii of the same shalbe alweyes impotent or absent .' (2) Besides the proctors spend time pleading in other courts as well. This was also true of York where a proctor might plead before the High Commission or the Dean and Chapter, or go down into the country with a commission. ' So that so fewe proctores appoynted for so many causes as shalbe in traine in all the said courtes can hever be able to spede their busynesses withoute great delayes, taking for heretofore whan there were in the said courte xx proctors continually occupying and moo, it hathben ben seen that divers of theym hath ben so overlad then with causes that they were driven to take ofte and many delayes and prorggations, ad idem for to bring in their matters libelled or plees, than moche moo must they doo the same nowe being but x. of theym...' This is all the more true as it seems likely that one or two out of the ten proctors will be ill most of the time, ' like is to be iii. or iiii. absent or impotente.' The speed with which causes can be put through the courts is going to be materially reduced, as the proctors will be too busy to devote the amount of attention to any one cause which they have given hitherto. This seems a sound conclusion, especially when it is remembered that not all the proctor's work was done in court. Even with a clerk to help him he must attend to a good deal of hack work, jogging witnesses , searching around for evidence, writing the acts of the court , drawing up documents for use in court and the like.

(I) B. M. M. S. S. Room. Cott. Cleo F. I. ' Touching proctours in the Court of Arches. (2) Idem.

This state of affairs , goes on the writer, will discourage prospective clients. ' And therefore divers that have good right to many things pleadable in the said cortes had leve renounce and forgo their interest in the same then entre so desperate sute in the said courte therfor.' (I)

It will also encourage slovenliness in the preparation and bringing forward of causes. ' And mens' causes can not be diligently attended by so fewe proctors. And men shalbe destitute of counsall, (whereof shuld be alweyes plenty in every courte.) And through the negligence of the proctors.. when they shall have so moche busyness divers good causes nede periseh for lack of good looking into, as lightly maye for the forgetting of one houre or mistaking of a worde doth ofte in the said courtes marre the best matier. ' (2)

The writer goes on to emphasise the point made above, that the proctor's is a laborious office and if he tries to skimp it his client will suffer. ' For a proctor's office is laborious and requireth moche busyness. First a proctor must take sufficient instructions of his clients and kepe every courte daye, remember every houre that is appoynted him to doo anything at, (and) write and pen every instrument that shall be requisite to be made in this matter. And whomsoever of the proctors that shalbe negligent or forgetful doing any of thes his matiers must neds deceaye , but so fewe proctors as be appoynted by the said statute are not able not only to do so in eche matier , but also scant able to bembre their clients' names, for so many that they shall then have.' (3)

(I) B. M. M. S.S. Room Cott. Cleo. F. I. (2) Idem. (3) Idem.

The arrangement will encourage mutual agreement on the part of the proctors to delay causes. Thus if one proctor finds that his time is fully occupied the next week he will persuade the proctor opposing him not to begin the cause until the following week.

' Also the fewer that there be of the said proctors the sooner they may agree amongest themselves to geve delayes eche to other bicause that one may have the same leve that he gave the other. As theyd do in termes to prove , wher to eche of the thre termes which they call ' terminos ad probandum ' a moneth wolde suffice... they take nowe by cross sufferance of eche another of them a quarter of a yere.... Which delayes thought they be nothing profittable ne commodious for the poor suters be bothe profitt-abil to the said proctor by reason that the causes are kept gretely occupied should have the longer tyme to do their busynes int.' (I)

In fact this corporation or conspiracy to delay justice is not only having the practical result of making things harder for the suitor, especially the poor one, but has had the procedural result of altering the way in which causes are brought forward as well. This is made even more clear by the next assertion of the writer. The proctors are so pressed for time that they sometimes omit the oath of calumny, ' which is the best punishment ordeyned in all the said lawes of civile and canon for the restraint of unlawful suites and prolixe processes.' (2)

Moreover, since there are so few proctors they will become haughty, in a more modern idiom they will have a sellers' market and act accordingly.

(I) B. M. M. S. S. Room Cleo. F. I. (2) Idem.

' Also the said statute of x. proctors maye be occasion that the same shuld waxe haulte by reason that they shuld be so fewe.' (I)

The writer goes on to say , in words quoted in another context that since there are so few proctors , they will be all the more under the thumb of the judge and will not plead in causes unpopular to the office, for fear of dismissal. What is more a rich man may engage the best of the proctors when there is such a small number of them, and the proctors will be unwilling to occupy their time with poor mens' causes. (2) The writer points out in conclusion that the statute of incorporation, which is illegal according to statute, is also illegal according th the canon and civil law , ' Which excepts nobody from procuring except women , madmen, etc. ' (3) It is also contrary to the oath taken by the proctor at the time of his admission, ' The proctors aforesaid are sworne, tyme of their admission that they shall never after be against the liberties, jurisdiction and prerogatives of the said cortes, but shall mayntene and defend the same to their power.' (4)

Most of these criticisms if not all of them seem to be applicable to the Courts of York. There was a statute of incorporation there , confining the number of general proctors to eight. (5) No one who did not possess this general proctorship could plead in the courts , and it will be remembered that one proctor was excepted against because he was ' not in the number of admitted or accustomed proctors in this court. ' (6)

(I) B. M. M. S. Cleo. F. I. (2) Idem. (3) Idem. (4) Idem. (5) Cons. Crt. Bk. 1580-85. F 157. Quoted in Chapter II. (6) A 38/24.

There is considerable evidence for the contention that the York proctors were , if not too busy to do their work properly, at least hard put to it to do it. If there were 243 causes being heard in the four months of the Consistory Court Book which are surveyed in an earlier chapter, then it follows that, given eight general proctors , each of them must be ' procuring ' in at least 30 causes. This figure of 30 is however probably too low. One of the proctors was likely to be ill or engaged elsewhere, in executing a commission in the country for example. Then again a proctor had to be engaged for the office causes, which meant that he was unable to act for himself. Moreover there were the other courts of Audience or Chancery and Exchequer to be considered, and of course the proctors practised in the Dean and Chapter court as well. It follows then that the more successful proctors might be acting in many more than thirty causes, perhaps a hundred . This was an obvious grievance to the subject ; no one could attend properly to the affairs of so many clients. There were complaints against this state of affairs in the southern courts, it was suggested in the ' Motions for Reformation in Matters Ecclesiastical,' for instance, that ' no Doctor, Sergeant, Counsellor, Attorney, or Procurator retain above an hundred causes at one time in his hand , sub poena suspensionis per annum.' (I) Another indication that the proctors were very occupied, indeed overburdened with causes is the great number of substitutions. A substitution indicated that a proctor could not appear at a court hearing because he was obliged to attend another court. He there-

(I) B. M. M. S. S, Cleopatra F. I.

-fore substituted another proctor. There are a great number of these substitutions, they occur every few pages in the court books. Some causes are substituted and the other proctor in turn engages a substitute.

This overburdening of the proctors with causes is reflected in the slips they make, especially over their clients' names. Indeed the assertion of the writer quoted above that this incorporation of proctors tends to make them forget even the names of their clients is borne out at York, it must be remembered too, that the miss-spelling of a name might easily lose the proctor his cause. This pressure of business can be the only reason for mistakes such as committing to hand in a libel , the one part of every cause which it might be thought , every proctor was bound to remember.

There seems to be some indication that the proctors were so busy that they could not undertake single handed what was, after all , one of the main duties of a notary public, the preparation of public instruments. William Fawkes , the grandfather of Guy Fawkes, says at the end of a renunciation that he has had the document drawn up ' by the hand of another (as I was occupied elsewhere) and have signed it with my accustomed name and seal.' (I)

The most conclusive evidence to show that the general proctorship and incorporation of proctors was having bad effects is the delay in bringing forward causes at York. This delay seems to have been a constant feature of the ecclesiastical courts, but it must have been materially increased by the shortage of proctors. As it constitutes one of the more

(I) Bucks. Archd. M. S. d.4. F 83.

grievous shortcomings of the courts it will be described sepatately.

Among the ' General Grevances in the Church, complayned of by diverse men and Bills put into the Parliament House, but never redd ' (I) there was a complaint of ' delayes of suits in the spiritual courts, which make the former fees more intollerable. For they may be compared to grievous sores delayed from being cured only for the gayne of the surgeon.' This was not a new grievance at York. In I547 the King's visitors ahad enjoined that -

' Item. All sutes now had or hereafter to be had in ony th'ecclesiasticall courtes within this diocese shalbe finished and ended within four sittinges at the moste, after th' answere maid, or litem contestatam.' (2) Even earlier that great administrator Wolsey had had the same opinion of the York courts and had referred in his ' Provinciale ' to ' the undue delay in suits which sometimes arises from the nice adherence to the procedure of the courts , the waiting is wont oto be burdensome to suitors and especially to the poor.' (3)

In order to discover whether in fact the litigant at York could have his business attended to with reasonable speed, a survey was made of I33 causes at the beginning of the Dean and Chapter Court Book for I580-94. (4) These causes represented most of the kinds to be tried at York, and displayed the extremed to which a cause might run, from very long and hotly contested causes such as Wyvell c. Browne, and Hoppes (5) which ran into 63 hearings covering the spade of three years and six months, and even then could not be considered finished, as sentence had not been given, to very short causes,

(I) B. M. Cleo F. II 50 F. 255 (page 85) (2)' Injunctions geven by the King's majesties' visitoures in his highnes' visitacion to the lorde archbushop etc.' York Cathedral Statutes P. 65. (3) Provinciale Bk V. Tit.5. (4) RAS 59. (5) Idem.

where there was only one appearance and the cause ended in a renunciation, that is one of the parties decided not to go on with the cause, or the excommunication of one of the parties , as in the case of Pride c. Rudde for instance . (I)

The 135 causes had altogether 969 hearings, which extended over 526 months , including vacation times (and it must be remembered that the client probably paid his proctor and his advocate during vacations as well as terms) This meant that the average litigant could be sure of his cause coming before the judge once a month, but he could not be sure of two hearings a month, although some litigants obviously had two hearings a month. If the Dean and Chapter Court calender for 1588-89 is assumed to represent the average number of days on which the court met there were some 54 court meetings in the year. There were then almost three meetings a month . Vacation times for this year at any rate , are too short to be of much importance. The court met during every month. The Dean and Chapter proceeded at a very leisurely pace indeed , with the cause of the ordinary litigant, especially when it becomes apparent that some causes might be put through quite a quickly that of Dasset c. Sawyer for instance received 78 hearings during 13 months, that is , exactly 6 a month. (2) In order to achieve this remarkable total several hearings of the one cause were had on one day. On the 19th June 1584, for example there were four hearings. Admittedly the cause of Dasset c. Sawyer is complicated by the fact that the original quarrel has been subdivided, and Dasset is suing Sawyer in the first, second and

(I) Begins 17th Nov. 1581. DAS 59. (2) Begins 11th October 1583. DAS 59.

third instance. (I) At the same time it is difficult to avoid the conclusion that if Dasset and Sawyer had not both had long purses, and proctors who ' would follow to the devil if whipped with a silver lash ,' (2) they would have had to wait their turn like ordinary folks.

The totals of the number of hearings and the number of months covered by the 135 causes give the figure of the average number of hearings for any cause as about seven hearings. So if the number of hearings a cause might receive be re-stated as roughly a hearing every two weeks a normal cause would take three and a half months, or perhaps four months. As the Dean and Chapter Court was not nearly so busy as some of the other courts, the Consistory for example , the normal time for the hearing and termination of a cause in them must have been longer . Even if allowance is made for prorogations by the judge so that the parties might reconsider, delays made by the parties so that they could find new evidence, and the Elizabethan mistrust of speedy justice (one of Giles Fletcher's complaints against the abominable Muscovites is that they tried causes almost at once, and wrote nothing down) it seems that causes in the courts were being brought forward too slowly.

A remedy which might have been tried, the increase of the number of days on which the courts sat, whould probably have been violently opposed . The Elizabethans felt that the ecclesiastical courts met quite often enough , in fact too often. Whitgift admitted that among the inconven-

(I) This means that there were three points at issue instead of one all of which were tried separately. (2) ' The Spiritual Courts Epitomized ' Harleian Miscellany.

-iences which had crept in was ' the over frequent and often keeping of courtes used by commissaries and officials to the vexing of the subjects and especially churchwardens with weekly attendance, causing their leaving other business to attend them.' (I)

There are no complaints against excessive fees at York, and probably fees at York compared favourably with those in the southern province, as can be seen by a comparison of the list of fees given by Conset and that set forth by Whitgift. It is difficult to compile an extensive table of fees at York because it is not always possible to be sure to whom the fees noted in the margin of the court books were due, whether to the judge, registrar or apparitor. It is however possible to work out the total costs of some suits from the significavits preserved in the Public Record Office. From an examination of twenty one causes whose fees are noted in the significavits the average cost of a cause was £6 I5 3d. Not all these causes had been finished , but on the other hand the total was swelled by the demand for £33 6 8d from his opponent by a Manx dignitary. While these fees would seem heavy if translated into modern prices they were less than those demanded by the common lawyers, or which could be demanded, as the common lawyers' fees were not constantly being pegged down during a time of rising prices, as those of the ecclesiastical lawyers were.

The question of the ability of the York ordinaries to enforce their

(I) Strype's ' Life and Acts of Archbishop Whitgift.'

orders to the litigants must now be considered. As has been said before the decline in the authority of the courts seems to have been somewhat exaggerated. Professor Tawney has referred to them as ' discredited ' but it seems quite clear that they were doing more business than ever before. During the reign of Mary the courts at York were not nearly so busy, although they could presumably enforce the sanctions of suspension and excommunication upon a population which was officially Catholic, and undoubtedly contained many Catholics. (I)

There is no doubt that at York it was difficult to make people appear in a cause and to continue to make appearances. The words ' not appearing by any means ' occur on page after page of the court books. A typical Consistory Court Book may be cited as an example. (2) During the time covered by the first 50 folios some 376 litigants were in court, not including the necessary promoter of the office , and including plaintiffs as well as defendants. Usually it was the defendant who would be the person liable not to appear and be decreed contumacious or excommunicate, and there were therefore approximately 175 defendants. Out of this number 12 litigants failed to appear when ordered , an additional 8 were pronounced contumacious for non appearance, 9 were excommunicated, 7 who had been previously excommunicated were absolved, and the judge demanded why a significavit should not be written for in the case of one litigant. Out of a possible 376, then 36 had at one time defied the court, about a tenth in all. If it is assumed that most of them were defendants, then the pro-

(I) See RVIIA 37 for indications of a slackening in the pace of business.
(2) Consistory Crt. Bk 1586-87 F 1-50.

-portion is larger, 36 out of roughly I75, or about a quarter. These figures are not exceptional, there was considerable contumacy at York all through the period. What is perhaps most significant is that 7 people did not appear and desire absolution, half as many as had been excommunicated.

Not all the persons who were pronounced contumacious necessarily deliberately refused to appear, many of them were probably detained. People were mostly connected with the land in one way or another, and had therefore more inclination and necessity to stay at home. This attitude is evident among the witnesses in the court books, most of whom have to be brought into court by compulsories. Then again the survey begins in October and continues into the winter when the roads are breaking up and it is more difficult to travel. The judge seems to have made allowance for this and litigants are usually given the benefit of the doubt when they fail to appear, and penalty reserved until the next court day.

The case of the excommunicates is different. They must be assumed to be persons who for one reason or another had decided to defy the court. There are indications that people were often unwilling to obey the court's order to appear, and they occasionally behaved with contempt in court. A certain Carleton for instance, who had confessed to fornication, ' refused to pay fees and behaved himselfe obstinatlie in the courte. ' (I)

In a survey of the Dean and Chapter Court Book for I580-94 which has already been referred to, out of I5I causes, I4 ended in one of the parties being pronounced excommunicate and remaining excommunicate so far as appearances go.

(I) AB 52/254.

They may have come in much later and paid their contumacy fees but it is difficult to be certain about this. (I) In another 7 causes the litigant was excommunicated by the judge and then came back and obtained absolution, with letters testimonial upon it. In another 7 instances the cause ended in one of the parties being declared contumacious with nothing said about excommunication. In one cause a significavit was sent out.

The fact that half the proportion of the e people who were excommunicated came back and asked to be absolved is again worth noting. Although this proportion varied it is an indication that excommunication was still an unpleasant burden to the subject. The proportion of excommunicated persons, in comparison with that of the total number of litigants , is not very high, about a tenth.

The number of excommunications varied, as might be expected, in the different courts. Thus in a survey of the Audience or Chancery Court from 6th November I579 to 20th May I580 there were 2 cases of parties not appearing when ordered, I5 excommunications, 8 absolutions , and 42 instances of the judge decreeing a party contumacious. It is impossible to avoid the conclusion that during this period and in this court the judge used the sanction of excommunication with great discretion. In every case in which contumacy was pronounced the penalty for the contumacy shown was reserved, even if the adverse party petitioned that the party should be excommunicated. The litigants had nothing to complain of on the score of hasty excommunication. (2

(I) RAS 59. D & C. Court Book I580-94. (2) ' Audience ' Crt. Bk. I579-84. folios I0-40.

It must be admitted that the constant use of excommunication tended to a lowering of its religious significance. It had become a common place secular sanction rather than a religious one. This was not what excommunication had been when the excommunicated was cursed ' with bells tolled, the cross raised on high , and candles burning and then put out ' as the York form has it. It is probable too, though statistics for a large field are wanting, that the medieval courts had not made the same easy use of excommunication that their Tudor successors did. In Peter Effard's time an offender would be declared suspended before he was excommunicate and suspension was in itself an effective penalty . In John Martiall's time an offender was more usually pronounced contumacious, and then, on his next failure to appear, excommunicated. Sometimes he was excommunicates at once. It has been said that ' the religious changes had bred a contempt for the spiritual weapons of suspension and excommunication, and the decline in the courts' influence is reflected in its failure to ensure the attendance of offenders to orders for punishment when given.' (I) The writer is here speaking of Gloucester Consistory Court, which seems to have been the worst of the consistories. This view is only partly true. It is doubtfuly whether medieval people had any great regard for the spiritual sanctions of excommunication. It was, says Crossley, speaking of the exactions taken by the Popes from the English monasteries ' used so often and for such material ends that its terrors must have been lessened

(I) ' An Elizabethan Church Official ' Thomas Powell, Chancellor of Gloucester Diocese. Art. V. Church Quarterly Review, 1938.

by constant use.' (I) The medieval church was far too shrewd to rely on purely ghostly terrors. Medieval excommunication and contumacy was attended by the threat of violent and humiliating punishment, savage penances , flogging, and imprisonment in the noxious dungeons of the ecclesiastical prisons, ' Peter's Prison ' in the case of York. An offender who became excommunicate or had been pronounced contumacious knew that his return to the faithful would be accompanied by what was described as a ' salutary penance.' The details of one such penance can be learned from the penance form preserved in the Bodleian Precedent Book. It orders the parish priest to ' call publicly in the face of your parish church aforesaid G. Grispinne of your same parish church to four floggings round your parish church... and as many in the presence of the procession to be celebrated in the parish church of Bradford.' (2) This amounted to eight floggings in all , with one of those bundles of branches which can be seen in the carvings of floggings on misereres , perhaps a hundred lashes in all. By the time of Elizabeth these floggings had died out, possibly the ordinaries did not choose to incur the odium of administering them, possibly the more enlightened among them had declared against them, at any rate they were gone for ever.(3) The contumacious person had nothing worse to fear when he appeared in court than the payment of his contumacy fees, and if an excommunicated person were enjoined penance it would merely be , as Whitgift says, ' the white sheet.'

Nevertheless , though excommunication had lost some of its old terrors it still remained an inconvenient penalty to incur . ' An excommunicated

(I)F. Crossley ' The English Abbey ' P. 75. (2) Bucks Archd. M.S. d. 4. F 37. (3) ' Perambulation of the churchyard and offerring of a candle fell into disuse soon after 1548.' F.S. Hockaday ' Gloucester Consistory Court.'

person could not sue nor give evidence nor receive a legacy.' (I) These were considerable disabilities to such litigious persons as the Elizabethan Yorkshiremen. Nor could an excommunicated person be married or buried. Here is the account of what took place when the relatives of an excommunicated woman tried to ensure her burial in the parish church.

' On which day hours and place there appeared personally Francis Moore, Francis Tunstall, and Peter Jackson, of the parish of Draxe, and diocese of York gentlemen, and each of them spontaneously confessed and recognised that a certain Helen Baxter of the said parish died yesterday, and that whereas the place of burial for her body was chosen , assigned and destined to be within the nave of the church of Draxe, out of the choice of her friends, John A Haulde, cleric, curate there said and affirmed that the said Elen at the time of her death had been excommunicate and therefore prohibited the body of the said Elen to be buried there, and did not wish to admit or permit the corpse bearers and those with them to the church yard close. Notwithstanding this affirmation and obstacle (impedimenta) on the part of the said curate, and because they wished to bury the aforesaid body, they, being kin or allied to the said deceased , and not knowing that she had been excommunicated otherwise than by the sole assertion of the said curate, and fearing that the putrefaction of the body should increase , by reason of this further delay, first opened the gate of the churchyard accompanied with a number of people of the neighbourhood, and then entered the church of Draxe with the aforesaid body and buried it or had it buried

(I) ' A History of the English Church . ' W. R. W. Stephens and W. Hunt. ii. P. 412.

in the nave of the said church next to the door of the chancel.' (I)

It is worth noting that the three persons concerned appeared on the day following the disturbance and petitioned for absolution from the excommunication they had incurred. This is by no means unusual ; people frequently appeared and voluntarily confessed that they had incurred excommunication by breaking some general edict of the church, such as that against fighting in churchyards, or that they had committed some sin such as fornication, for which they asked penance. Thus the moral supervision of the church at this time must not be looked on as wholly alien to the needs and wishes of the people . To a very great extent they co-operated willingly in the correction of morals. Professor Rowse has said ' The supervision of all classes of society was close, astonishing in its detail, the moral disciplining of the people so thorough it would be intolerable to us . It was only tolerable to them because there were large loopholes through which to escape - into life on the roads, tthe life of pedlars, tinkers, etc.' (2 In all probability however the people of the time would have admitted that there had to be some correction of morals , and this seems to be shown by the readiness with which they denounced offenders to the ordinaries when they were not responsible for doing so. Moreover the ecclesiastical courts at York were essentially a forum for litigation between parties and not a species of inquisition. This can be seen very clearly by an examination of the significavits from the diocese of York.

In all the number of significavits sent out from York diocese between

(I) AB 52/ 339. (2) ' The England of Elizabeth.' P. 424.

some unspecified date in I560 and the IIth November I603 is I42. Not all of these came from the courts of York, the proportions are as follows. 98 went out from the Consistory Court at York, and in the case of 23 others the name of the court is not specified, but is likely to have been the Consistory. 9 came from the Audience or Chancery Court, 5 from the Exchequer, 2 from Richmond, presumably from the Archdeacon's court there, 2 came from the Peculiar of Howden, I from a Peculiar whose name cannot be read, I from Hexham Peculiar, I from the Archdeacon of York, and I from the Archdeacon of Nottingham's court. (I)

Taken in all there were I34 significavits from the York courts if the 23 unidentified ones are assumed to have come from them, as they probably did. Assuming that the significavits preserved in Chancery and later moved to the Public Record Office represent all the significavits sent out, which seems likely, as there are no remarkable gaps, there is an average of three significavits a year from the Archbishops courts . Probably far more significavits are mentioned as having been decreed in the court books than ever went out, as the threat of a significavit was often effective and brought the offender in. The cost of a significavit may have deterred some parties from having one issued , but it seems very unlikely. (2) If a party had contested suit as far as this point he would surely be prepared to spend some more money on a significavit, especially as he knew that when the offender was brought in he would obtain his costs. The figures of the significavits from the other dioceses are given in an append-

(I) P. R. O. C. 85. Files I90-I93. (2) F. D. Price takes a different view ' The Abuses of excommunication.' E. H. R. Vol. LVII I942, January.

ix. They seem to suggest that the number of significavits from York diocese was not unusual.

It might be assumed that the people who stood out against the threat of a significavit would be persons in a strong social position, the gentry in fact. This does not seem to have been the case, perhaps because the higher a man's social class the more inconvenient excommunication became , because of the amount of litigation he might be engaged in.

Here are the figures from the significavits as a whole. 59 of the people for whom a significavit went out were of an unspecified position or occupation, 30 are mentioned as being women, mostly married, 21 were yeomen, 11 were husbandmen, 9 were gentlemen, 3 were squires, 4 clothiers, 2 clerics, 1 was a carpenter, 1 an arrowhead smith, 1 a tailor, 1 what appears to be ' linen weaver,' 1 a weaver , and one a sailor (Martin Frobisher.)

In short the great bulk of these persons were ordinary well to do people , small farmers of yeomen, reflecting probably the distribution of occupation in Yorkshire, with a few tradesmen. Only twelve of them were persons of admitted social standing, and o none seem to have been noble.

The reasons for an offender's attachment on a significavit are not always indicated in the document. Here are the available figures.

66 people refused to appear to answer the libel, 28 refused to pay taxed costs or expenses, 4 refused to receive penances, 2 refused to appear as witnesses, 2 refused to answer to articles touching their soul's health, 2 refused to obey unspecified orders from the holders of Peculiar Jurisd-

-ictions , I refused to give sufficient bond and produce suitable sureties to ensure the payment of a protion, 2 refused to certify that they had performed penance, 2 refused to marry as ordered, and in 33 other causes the reason for the original excommunication is not stated. The fact that more persons had significavits issued against them for refusing to come to court in the first place than for any other reason is highly significant, and suggests that the great majority of them fled the diocese.

The causes from which the significavits arose, so far as they can be gathered , can be seen from the following figures.

Diffamation	35
Subtraction of tithes (i.e. failure to pay tithes.)	32.
Matrimonial causes .	9
Correction.	4.
Testamentary.	3.
Fornication.	I.
Appeal.	I.
Matrimonial and filial (i.e. a cause to decide whether a marriage were legitimate and the children born in wedlock.)	I.
Neglect to provide for an illegitimate child.	I.
Contract of marriage (to decide whether a betrothal had taken place.)	I.

Probate of testament.	I.
Subtraction (i.e. non payment) of pensions and synodals, payments due because of a visitation.)	I.
Subtraction of portion (part of a deceased's estate destined to his widow or a child.)	I.
Temerary (i.e. rash) administration.	I.
Restitution of conjugal rights.	I.
Querele of nullity.	I.

Diffamation causes are at the head of the list, as in another survey. Most of these significavits then were sent out not because of office causes but because of causes between party and party.

The process of significavit seems to have been slow, and in the beginning of the reign, as is indicated in the statute of 5 Eliz. Chap. XXIII it seems to have been badly executed. How far this failure to execute the writ continued is difficult to say, probably it was reasonably effective. The only real source for information as to the success or failure of the significavit procedure is the letters absolutory which asked the Queen to release a prisoner who had been imprisoned on a significavit and had desired absolution. These letters are not to be found in the Public Record Office though they were enrolled in Chancery, and it is therefore impossible to e

tell how many people escaped being arrested when a significavit had been issued for them.

Certainly in one instance (I) the significavit had to be repeated , while in the case of Thomas Burgatroide of Byngley a significavit was sent out on the 24th January 1576 (2) to induce him to contribute to the cost of rearing his illegitimate child by Elizabeth Aykroyde, a significavit was sent out again on 17th January 1578, because he had not accepted the child,(3) and a third significavit was sent out on 7th June 1584. (4) Of course it is quite possible that Burgatroide was imprisoned, or at least brought to demand absolution after each significavit.

Altogether the procedure seems to have been fairly slow. Nothing could be done during the initial forty days during which the offender stood excommunicate, after that the significavit would take some time to come down to Chancery, the endorsements on some significavits show that an even longer time elapsed than might have been expected. This was probably because the significavit waited to go into the mail bag that Robert Lougher or some other Chancellor of the Archbishop took down with him to London. There was / a final delay in the time the writ ' de excommunicato capiendo' took to reach the sheriff and be o executed.

It is difficult to see how many litigants could expect to secure the ' sors principalis ' and their costs before recourse was had to a significavit. In the survey of the Dean and Chapter Court Book for 1580-94 no less than 21 causes out of 151 examined ended in a reconciliation,

(I) P. R. O. C. 85 190/ 1/2. (2) C. 85. 190/23. (3) C. 85 191/ 8. (4) C. 85. 192/3.

possibly more causes than these were reconciled but not o noted by the actuary. Another 4 causes were renounced. Several causes disappear from the court books, they were probably reconciled or abandoned , and no note was made of the fact by the actuary. Roughly speaking it may be said that a litigant had a good chance of obtaining sentence though he might not obtain his costs, as o there are several examples of parties leaving court without paying their fees.

No direct opinions about the justice administered by the Archbishop's courts seems to have survived. As Brinkworth says complaints against the ordinaries would probably be severely discouraged, in the case of ordinary litigants.

Nevertheless the lack of complaints about the York courts may indicate that justice was administered more equitably than in other parts of England. Possibly some of Rokeby's enthusiams for justice survived in his subordinates, such as Anthony Iveson, till the end of the reign. Perhaps the greatest testimonial to the equity of the courts lies in the fact that during the Commonwealth , when the ecclesiastical courts had been abolished and new officials appointed to fulfill the duties of the ordinaries the people of York continued to bring their wills to the officials , though their authority was ' both boldly and unlawfully exercised , and continued without any Warrant at all.' (I) Rokeby's work had not been done in vain. Indeed a strict adherence to the principles of the canon and civil law could not fail to result in jurisdiction which was at once just and mercif-

(I) ' Sergeant Thorpe, Judge of Assize for the Northern Circuit, his Charge as it was delivered to the Grand Jury at York Assizes, the twentieth of March 1646.' Harl. Miscell. Vol.II. 1744.

-ul, for the ordinaries followed the precepts of a code which was at once civilised and Christian, often in strong contrast to those of the Common Law . It is impossible not to be struck by the religious element which ran through the work of the officials, a fusion between law and equity which is characterised by the law manual of one W Elizabethan official which has been adorned with prints of the Scourging and the Resurrection, and it was this combination which made possible the resurgence of the courts at the Restoration, enabling them to continue the long struggle of the Church of England on behalf of the widow, the fathe-less , and the oppressed.

APPENDIX ONE.

(AB 24/306. ' Audience ' Crt. Bk. 1579-84.)

' A voluntarie Recognicion or declaracion maid by Elizabeth Tankard the wife of William Tankard before the Righte worshipful Mr. Robarte Lougher... doctor of the law , one of the masters of the chauncerie and chauncellor unto the moste Reverend father in God Edwine by the providence of God Archebushop of Yorke primate of England and metropolitain , the xxth day of Marche Anno domini 1584 , which she moste humblie prayeth may be received upon hir othe and enacted to testifie for ever unto the worlde the ungodlie unnatural practises of hir said husband and others tending not onelie to hir utter undoing but further to the greate wronge and preiudice of others.

Whereas William Tankarde my said husband aboute candlemes laste paste was a twelve monethe , I then beinge greate with childe and within sex weekes or thereaboutes of my delivery as we were lying in bedd together one mornynge did declare unto me that the childe wherewith I was conceived seemed not to be his because it cam not to his Reckenynge and therefore he advysed me to lett hym knowe who was the father thereof. Addinge that if I would so doo whether he were his friend or enemie that had begotten the same he would maike no matter thereof nether thinke worse of me if I woulde declare the truthe, the which his speeche was so straunge and grevous unto me yet I therewith beinge greatlye astonied and amased and no less greved ; with bitter teares did at the same time often declare

unto him that it was none but Gode his and myne, takinge Gode to recorde in that behalfe. Yet he not so a satisfyed said he would give me a further tyme for further answer hopinge that I would otherwise satisfie him , who afterwardes did earnestlie laboure me frome tyme to tyme to charge soom other with the begettinge thereof and willed me sometymes to lay the same upon one Richard Spurret his father's servante and said he would give xxli that I would lay the same upon him. And other tymes asked me if the same were not the parson's of Hawneby , saying that I mighte verie well so do because that I oftentimes wente to the parsonage whereas in truth I never frequented the parson's house but in the company of either of my said husband his brothers or mys sisters,whose importunitie by persuasions and threatenинge was suche at soom tymes as that he would use me as well as anie man should do his wife if I would confesse yea but to him selfe who was the father of the said child . So that at lengthe by meanes afforesaide and for the satisfyinge of his mind I perswaded my selfe accordinge to his faithfull promis he would have bene of suche lyke or rather better behaviour towarde me then before he had bene I was contented to say the parson was the father thereof , and yt I thought that the leaste inconvenience would ensue by charginge the parson therewith of all others because that he and my husband were at that tyme varie greate frends. And the rather I did so because my husband did more urge me to charge the parson then anie other and seeing that I would not otherwise satisfie his greate importunitie withoute charginge of soom I thought it not amis the rather to lay the same upon the parson then anie other because he was the man whom

I never loved in my harte for that he did evermore taike parte against myne owne father with my father in lawe Mr. Tankarde his ancient and knowne enemie. And furthermore whereas the verie same day I was churched my said husbande cam to the house where I was being then so weike and feebàe that I was not able to go withoute the help of a stoffe and the supportation of others , and he sent me woord to coom unto the backsyde of the said house to speak with him, and it being declared unto him that my infirmitie and waiknes was such that I was not able to go unto t him he sente me woorde againe that he would never acknowledge me to be his wife and that I should never have anie good of him excepte I would at that instante coom unto him , so I, beinge holpen unto the entrie of the said house he prayed me to coom withoute the doore and he himselfe tooke me by the one arme and did helpe me to convay me withoute the doore of the said house where he had provyded horses redie to carrie me away and indeed did sett me on horsebacke and before I did eate anie thinge did carrie me to Arden to his father's house where in the waye I s was so sicke that I was like to have swooned ? once or twise. And lykewise after I was coomed to his father's house I there contynewed longe and daungerously sicke. And fafter that I had recovered healthe they kepte me close from companie in a parloure abridginge muche my libertie whileste towards Lammes . And then they sent me away by a man to me unknowne who caried me to a place called Thorpe to one mistris Beckwithes house my father in lawes sister where I remayned all the latter ende of that soomar and

whileste (i.e. whiles - a while) after michaelmes that my father in lawe cam over and tould me that I muste either go to Yorke or to London, but he thoughte better to London then to Yorke, whereas I should do nothinge but recite and confes what I had said to my husbande and If I would so do my husbande should be my good husbande and he woulde be my good father .

And presentlie after I was carried away from thence indeed to London by one Christofer Franke who perswaded me on the way and threatened me in suche sorte (God forgive him) to confes when I cam thether what I had said to hi my husbande that I was in feare of my life never expectinge to coom into this countrie againe or to see anie friende I had. And whereas I cam to London upon the Sunday ix or x of the clocke I was broughte before three or foure gentlemen , amongste whom one examined me amongste other things whether I had confessed that the parson was the father of my childe or to that effect whereunto I answered I had said so to my husband . And tarying amongstee them aboute an houre or somewhat more I cam backe againe to my hoste's house where I remayned to the Friday followinge and never went abrode all the while I taried in London but that one days tyme. And then I was broughte again to the said Mris. Beckwith's house where I remayned allway after till the first Munday in Lente now instant that I was broughte to Yorke before the Commissioners by the said Spurret and Franke who perswaded me at that tyme to say the parson of Hawneby was the father of my childe, assuring me that it should nowise hurte myselfe to saye so but be a meanes to do the parson a displeasure which they went about to do ever since my husbande caried me to my fathers house as before I have declared

And sence I cam to Yorke I have not had anie access or conference to or with anie of myne owne frends or they with me so that I could never perceive or learne what inconvenience or mischief my husbande soughte againste me by those his ungodlie and unnaturall practices , but sence my coomynge to Yorke that my frends and others beinge strangers hearinge how they had proceeded and dealte with me did open unto me into what inconvenience I was broghte . And further before I was removed frome Arden to Thorpe I was earnestlie and verie often perswaded by my husbande my father in lawe my mother in lawe the said Richard Spurret, Christopher Franke and George Wells parson of Kirkelye Knowle and others to stand to these words which I had said to my husbande for the savinge of their credits , because they had geven out speches thereof and had reported the same abrode.'

APPENDIX TWO.

As the subject of the extraordinary officers of the Archbishop is one of considerable interest , a few words on the powers of the Dean of Christianty in York prove useful.

In the register of Archbishop Young (F. 43) a ' Commission to the Dean of Christianty of the City of York ' is recorded.

It issued from Matthew the Dean, and the Chapter to John Bayteman, cleric, M.A. and commissioned him to inquire and investigate about crimes excesses, and misdeeds of any persons committed within the Deanery of the Christianty of York. Simple fornication is to be puhished canonically by penance. He was also to commit administration of persons dying (presumably within the deanery) to the executors named in the testaments, or to receive their renunciation, or to deprive them of administration by his decree. He was also to accept security for the payment of filial portions , and to punish greater crimes than those mentioned above. He was also to ask for and receive sums of money owing to the Archbishop within the Deanery of Christianty and deliver them to the Archbishop.

He is given the Archbishop's powers , with the usual clause of ' canonical and ecclesiastical coercion,' at the Archbishop's good pleasure.

In the light of this commission he appears to have acted partly as a rural dean, partly as a financial collector for the Archbishop.

APPENDIX. THREE.

The Cambridge Precedent Book has thrown a good deal of new light on the Archdeacons and Rural Deans in Yorkshire during the end of the fifteenth century, in the shape of commissions and other documents relating to the tenure of office of these officials which it presents. As any shortened version of an account of the powers of the Deans and Archdeacons would be inadequate and possibly misleading the writer will content himself by referring to the documents in question. They are -

' Littera pro convocacio Archdiacono Richmondi .' (F 52.) the actual title of this document is ' Alia etc. ' but it follows immediately on the

' Littera pro convocacio Capitulo Ebor.' (F 52)

' Alia Archdiacono Estriddinge.' (F 55.)

'Littera Archdiacono Ebor pro parliamento .' (F 57.)

' Alia de eodem Archdiacono Archdiaconi Richemond.' (F 58)

' Commissio ad deputandum Officialem decanatu vacante.' (F 64.)

and finally ' Commissio Archdiaconi ad deputandum Officialem.' (F. 6I.)

APPENDIX FOUR.

A short list of appeals to the Delegates Court from York , which can probably be added to reads as follows.

I. Roger Beckwith c. Eliz. Cholmley. P.R. O. Del. 5/I.

2. Toby Matthew c. Thomas Burton . Del. 5/I. I35.

3. Jane Foster c. Phillipa Pullen. Del. 5/I. 86.

4. Thomas Burton c. John Kingsmill. Del. 5/I II7.

5. Roger Hobman c. William Parker. Del 5/I I37.

6. Margjory Shepperd c. Francis Thomson Del. 5/I I63.

7. Alexander Dawson c. Richard Dawson and others Del. P 5/2 IO.

8. John Skiers c. William Adams. Del. 5/2. 49.

9. Matthew Hutton c. John Benett and Thomas Painter. Del. 5/2 84.

IO. William Loyde c. Henry Byllinge and others. Del 5/2 95.

II. Elizabeth Firth c. William Fothergill Del 5/2. I60.

I2. John Milner and John Cloughe c. Robert Ellison. Del. 5/2. 225.

I3. John Pratt c. Richard Pennington. Del. 5/2 236.

APPENDIX FIVE. FINANCIAL DOCUMENTS.

The financial administration of a diocese and province in Elizabethan times and the collection and payment of pensions and synodals, mulcts, benevolences and other sums owed to the Archbishop still awaits an historian. Here again the necessary documents can only be indicated. A discussion of the financial arrangements of the province, even in relation th the Exchequer Court, would prove too long. Among the more important Elizabethan documents which concern financial matters are-

' Excommunication against one who does not pay the tithe and subsidy.' (Bucks Archd. M. S. d. 4. F. 85.)

' Denunication of excommunication for non payment of tithes.' (Bucks. F 86.)

'Excommunication because of non payment of the tithe and subsidy owed to the Lord IKing. ' (Bucks. F 40.)

Among the earlier i financial documents , int the Cambridge Precedent Book are -

' Citacio non solvendum decimam sancti Petri.' (Cam. F 7.)

' Citacio pro mulctis in synodo.' (F 8.)

' Monicio pro mulctis et pro sino summis solvend. pro non residencia.' (F 107

' Monicio pro mulctis et pensionis ' (F 106.)

' Alia Littera monicionis pro mulctis et sequestracio in c fructiis.' (F 109)

' Monicio ad citandum quare non deberet solvere s duplici .' and there are many others.

APPENDIX SIX.

The list of proctors who definitely practised in the Dean and Chapter Court is as follows.

James Broket. (Ras 59 F 6.)

Michael Browmerigg. (A 38 F 5.)

William Dunwiche . (A 38 F 5.)

James Dunnynge. (Ras 21 F 69.)

Winifrid Ellis . (A 38. F 5.)

John Farley. (Ras 59 F 9.)

Edward Fawcett. (A 38 F 2.)

Christopher Foster (Ras 59 F 6.)

John Standeven. (Ras (A 38 F 14.)

James Stocke. (Ras 59)

This list might probably be added to considerably, most of the proctors are likely to have practised in the court at one time or another.

APPENDIX SEVEN.

Here is a list of the numbers of significavits sent into Chancery by the officials of dioceses other than York, or rather the number of pieces in the files, as far as could be ascertained. D. F. Price suggests in ' The Abuse of Excommunication and the Decline of Ecclesiastical Discipline under Queen Elizabeth ' E.H. R. I942 January. that the number still on record in the Public Record Office may not be the full number sent out. This does not seem to be the case with regard to the York significavits, but without detailed examination it would be difficult to answer this question with regard to the other dioceses.

Durham. I499-I599.	I2 pieces.
Carlisle. I432- I597.	2I.
Chester.	2I.
Gloucester.	37.
Oxford.	24.
Worcester. I5IO- I595.	25.
Winchester. I553-I599.	35.
Salisbury. I578-I588.	22.
Norwich. I559- I582	40.
London. I56I- I597.	54.
Lincoln. I552- I596.	4I.
Hereford. I560-I6II.	54.
Canterbury. I559- I598.	I74.

The varying numbers of these pieces suggest that some diminution in their original number has taken place, but a comparison of the number of York

significavits with the number of some of the other dioceses would seem to indicate that in view of the size of York diocese the number of significavits sent out was not abnormal, though this is a matter more for individual opinion than for definite statement .